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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: September 20; at 9:00 a.m.
WHERE: Room 808, 75 Spring Street, SW.
Richard B. Russell Federal Building
Atlanta, GA
RESERVATIONS: Call the Federal Information Center
404–331–6895

WASHINGTON, DC

WHEN: September 25; at 9:00 a.m.
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-146]

Mediterranean Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are quarantining an area in Los Angeles County in California because of the Mediterranean fruit fly and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective August 23, 1989. Consideration will be given only to comments received on or before October 30, 1989.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-146. Comments received may be inspected at Room 1141 of the South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

We are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart 301.78, "Mediterranean Fruit Fly" (referred to below as the regulations). These regulations quarantine a portion of Los Angeles County, California, because of the Mediterranean fruit fly and restrict the interstate movement of regulated articles from the quarantined area.

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS), a unit within the U.S. Department of Agriculture (USDA), reveal that a portion of Los Angeles County, California, is infested with the Mediterranean fruit fly. Specifically, since July 20, 1989, a total of 40 Medfly adults and 40 larvae have been found within a 3-square-mile area of Los Angeles County. The Mediterranean fruit fly is not known to occur anywhere else in the United States, except in Hawaii.

In cooperation with APHIS, officials of State agencies of California have begun an intensive Mediterranean fruit fly eradication program in the quarantined area in California. Also, as explained below, California has taken action to restrict the intrastate movement of certain articles from the quarantined area to prevent the spread of the Mediterranean fruit fly within California. However, it is also necessary to restrict the interstate movement of certain articles from the quarantined area to prevent the spread of the Mediterranean fruit fly to noninfested areas in other states. Accordingly, to prevent the spread of the Mediterranean fruit fly, this document establishes Federal regulations, which are described below by section.

Restrictions on Interstate Movement of Regulated Articles (Section 301.78)

Section 301.78 prohibits any person from moving any regulated article interstate from any quarantined area except in accordance with conditions prescribed in the regulations. For informational purposes, a footnote (number 1) has been added to reference the authority of an employee to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply remedial measures to, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

Definitions (Section 301.78-1)

Section 301.78-1 contains, for informational purposes, definitions of the following terms: "Administrator," "Animal and Plant Health Inspection Service," "Certificate," "Compliance Agreement," "Infestation," "Inspector," "Interstate," "Limited permit," "Mediterranean fruit fly," "Moved," "Person," "Quarantined Area," "Regulated article" and "State."

Regulated Articles (Section 301.78-2)

The regulations impose conditions on the interstate movement of those articles that present a significant risk of spreading Mediterranean fruit fly if moved without restrictions from quarantined areas into or through noninfested areas. These articles, which are designated as regulated articles, may not be moved interstate from quarantined areas except in accordance with conditions specified in §§ 301.78-4 through 301.78-10.

Section 301.78-2 designates as regulated articles a number of fruits, nuts, vegetables, and berries, and soil within the drip line of plants that produce the fruits, nuts, vegetables, or berries. Based on research and experience, the articles listed in § 301.78-2 (a) and (b) as regulated articles are articles that are likely to cause the spread of the Mediterranean fruit fly. In addition, § 301.78-2(c) allows designation of any other product, article, or means of conveyance as a regulated article if an inspector determines that it presents a risk of spreading the Mediterranean fruit fly and notifies the person in possession of the product,

article, or means of conveyance that it is subject to the restrictions in the regulations. This provision for "any other product, article, or means of conveyance" allows an inspector who discovers a risk of spreading Mediterranean fruit fly (e.g., a truck with Medfly pupae in cracks in the floorboards) to regulate the affected articles immediately, by informing the person in possession of the product, article, or means of conveyance that it is being regulated.

Fruits, nuts, vegetables, or berries that are canned, dried, or frozen below −17.8 °C. (0 °F.) are not included as regulated articles since the Mediterranean fruit fly could not survive under those conditions.

Quarantined Areas (Section 301.78–3)

As stated in § 301.78–3(a), it is necessary to quarantine areas in which the Mediterranean fruit fly has been found by an inspector, areas in which the Administrator has reason to believe the Mediterranean fruit fly is present, and areas the Administrator considers necessary to quarantine because of their inseparability for quarantine enforcement purposes from localities where Mediterranean fruit flies have been found.

Section 301.78–3(a) further provides that less than an entire state will be designated as a quarantined area only if the Administrator determines that (1) the state has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by our regulations with respect to the interstate movement of these articles; and (2) quarantining less than the entire state will prevent the interstate spread of the Mediterranean fruit fly. These determinations would indicate that infestations are confined to the quarantined areas and eliminate the need for designating an entire state as a quarantined area.

In accordance with these criteria, we are designating as a quarantined area an area in Los Angeles County in California. This area is as follows:

Los Angeles County: That portion of the county in the Elysian Park area bounded by a line drawn as follows: Beginning at the intersection of U.S. Highway 101 and Barham Boulevard; then northerly along this boulevard to its intersection with Forest Lawn Drive; then northeasterly along this drive to its intersection with State Highway 134; then easterly along this highway to its intersection with Interstate Highway 5; then southerly along Interstate Highway 5 to its intersection with Colorado Boulevard; then easterly along this boulevard to its intersection with Eagle Rock Boulevard; then southwesterly along Eagle Rock Boulevard to its intersection with York Boulevard; then southeasterly along York Boulevard to its intersection with Figueroa Street; then southwesterly along this street to its intersection with Avenue 60; then southeasterly along this avenue to its intersection with Monterey Road; then southerly along this road to its intersection with Huntington Drive North; then southwesterly along this drive to its intersection with Soto Street; then southwesterly along this street to its intersection with Whittier Boulevard; then westerly along this boulevard to its intersection with 6th Street; then northwesterly along this street to its intersection with Broadway; then southwesterly along Broadway to its intersection with Interstate Highway 10; then westerly along this highway to its intersection with Western Avenue; then north along this avenue to its intersection with Venice Boulevard; then westerly along this boulevard to its intersection with Crenshaw Boulevard; then northeasterly along this boulevard to its intersection with Olympic Boulevard; then westerly along this boulevard to its intersection with Highland Avenue; then northerly along this avenue to its intersection with U.S. Highway 101; then northwesterly along this highway to the point of beginning.

It is necessary to designate this portion of Los Angeles County as a quarantined area because it is an area in which the Mediterranean fruit fly has been found, or in which the Administrator has reason to believe the Mediterranean fruit fly is present, or an area necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where Mediterranean fruit fly has been found.

There does not appear to be any reason to designate any other quarantined areas in California other than those areas specified above. California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles under this subpart.

Section 301.78–3(b) provides that the Administrator or an inspector may designate an area as a quarantined area temporarily without publication in the **Federal Register** if there is a basis for listing the area as a quarantined area under § 301.78–3(a) and if the owner or person in possession of the area to be quarantined is given written notice of this action. This is necessary in order to prevent spread of the Mediterranean fruit fly before restrictions can be published in the **Federal Register** concerning the interstate movement of regulated articles from the designated area.

Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas (Sections 301.78–4 Through 301.78–10)

Section 301.78–4

Section 301.78–4(a) requires regulated articles moved interstate from quarantined areas to be accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.78–5 and 301.78–8, unless moved as prescribed in § 301.78–4(b).

Section 301.78–4(b) allows a regulated article to move interstate without a certificate or limited permit if the article originates outside of a quarantined area, if it is moved through the quarantined area without stopping except for refueling or for traffic conditions such as traffic lights and stop signs, if it is shipped in an enclosed vehicle or is completely covered so as to prevent access by Mediterranean fruit flies, if the point of origin is indicated on the waybill, and if the enclosed vehicle or the enclosure which contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

Also, § 301.78–4(c) allows the Department to move regulated articles interstate without a certificate or limited permit for experimental or scientific purposes. However, the regulated articles must be moved in accordance with a permit issued by the Administrator, under conditions that prevent the spread of Mediterranean fruit fly.

Section 301.78–4 contains a footnote to remind persons of other applicable domestic plant quarantine and regulation requirements that need to be met for interstate movement.

Section 301.78–5

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles upon a finding by an inspector that, because of certain conditions (e.g. the article is free of Mediterranean fruit fly), there is an absence of a pest risk prior to movement. Regulated articles accompanied by a certificate can be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when an inspector has determined that, because of a possible pest risk, such articles may be safely moved interstate only subject to further restrictions, such as movement to limited areas and movement for limited purposes. Section

301.78–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.78–5(a) provides that a certificate shall be issued by an inspector for the movement of a regulated article if the inspector determines that the article: (1) is free of Mediterranean fruit fly, has been treated under direction of an inspector in accordance with § 301.78–10, or comes from a premises of origin free from Mediterranean fruit fly; (2) will be moved through the quarantined area in an enclosed vehicle or is completely covered to prevent access by Mediterranean fruit flies; (3) will be moved in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), to prevent the spread of the Mediterranean fruit fly; and (4) is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to that article.

A footnote explains that the Secretary of Agriculture may, pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 105dd), take emergency actions.

Section 301.78–5(b) provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for movement of a regulated article if the inspector determines that the article is to be moved to a specified destination for specified handling, utilization or processing (such as juicing, freezing, canning, or drying), and that the movement will not result in the spread of Mediterranean fruit fly.

Section 301.78–5(c) allows any person who has entered into and is operating under a compliance agreement to execute a certificate or limited permit for the interstate movement of a regulated article after an inspector has made a determination that the article is eligible for a certificate or limited permit in accordance with § 301.78–5(a) or (b).

Also, § 301.78–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector upon a determination by the inspector that the holder of the certificate or limited permit has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

Section 301.78–6

Section 301.78–6 provides for the issuance and cancellation of compliance agreements. Specifically, compliance agreements can be entered into by any person engaged in growing, handling, or moving regulated articles who agrees in writing to comply with the provisions of Subpart 301.78. Compliance agreements are provided for the convenience of persons who are involved in shipments of regulated articles from quarantined areas; they are written to ensure that persons issuing certificates or limited permits are knowledgeable with respect to the requirements of Subpart 301.78 and have agreed to comply with them.

Section 301.78–6 also provides that an inspector supervising enforcement of a compliance agreement may cancel the agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact. This section contains a footnote to explain where compliance agreement forms can be obtained.

Sections 301.78–7, 301.78–8, and 301.78–9

Section 301.78–7 provides that any person who desires a certificate or limited permit to move regulated articles must, as far in advance of movement as possible (no less than 48 hours before the desired movement), request the services of an inspector to issue a certificate or limited permit. This provision ensures that persons desiring inspection services can obtain them before the intended movement date. A footnote is added for informational purposes to indicate how to contact the inspectors for inspection or how to obtain additional information from offices of the Animal and Plant Health Inspection Service.

Section 301.78–8 requires the certificate or limited permit issued for the movement of the regulated article to be attached to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill during the interstate movement. This provision is necessary for enforcement purposes.

Section 301.78–9 explains the APHIS policy that services of an inspector that are needed to comply with the provisions of the regulations in Subpart 301.78 are provided without cost during normal business hours (8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays), but that we will not be responsible for any other costs or charges.

Section 301.78–10

Section 301.78–10 identifies treatments for the Mediterranean fruit fly that are contained in the Plant Protection and Quarantine Treatment Manual. The Plant Protection and Quarantine Treatment Manual is incorporated by reference in the Code of Federal Regulations in 7 CFR Part 300. Research has determined that these treatments would be adequate to destroy the Mediterranean fruit fly. The treatment schedules for tomato, bell pepper and tomato, and soil in § 301.78–10 are as follows:

(a) *Tomato:* Fumigation with methyl bromide at normal atmosphere pressure with 32 g/m³ for 3½ hours at 21 °C. (70 °F.) or above.

(b) *Bell pepper and tomato:* Heat the article by saturated water vapor at 44.4 °C. (112 °F.) until approximate center of articles reaches 44.4 °C. (112 °F.) and maintain at 44.4 °C. (112 °F.) for 8¾ hours, then immediately cool.

Note—Commodities should be tested by the shipper to determine each commodity's tolerance to the treatment before commercial treatments are attempted.

(c) *Soil:* Soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, and berries listed in § 301.78–2(a) of this subpart: Apply diazinon at the rate of 5 pounds actual ingredient per acre to the soil within the drip area with sufficient water to wet the soil to a depth of at least ½ inch. Both immersion and pour-on treatment procedures are also acceptable.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mediterranean fruit fly from spreading to noninfested areas of the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is

not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from a portion of Los Angeles County, California. Within the regulated area there are approximately 234 entities that would be affected, including 2 citrus processing plants, 1 farmers market, 25 nurseries, 1 community garden, 5 wholesale markets, and 200 retail fruit/produce vendors. Those entities affected represent less than 5 percent of the total of similar enterprises operating in the State of California.

Although these are small entities, they sell regulated articles primarily for local intrastate, not interstate, movement. The effect on those few persons who do move regulated articles interstate is minimized by the availability of various treatments, that in most cases will permit the interstate movement of regulated articles with very little additional cost. Also many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities would be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other states.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Part 301 is amended by adding a new "Subpart-Mediterranean Fruit Fly" to read as follows:

Subpart—Mediterranean Fruit Fly

Sec.

Subpart—Mediterranean Fruit Fly

§ 301.78 Restrictions on interstate movement of regulated articles.

No person shall move interstate from any quarantined area any regulated article except in accordance with this subpart.[1]

§ 301.78–1 Definitions.

In this subpart the following definitions apply:

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of Mediterranean fruit fly and may be moved interstate to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant to it.

Infestation. The presence of the Mediterranean fruit fly or the existence of circumstances that make it reasonable to believe that the Mediterranean fruit fly is present.

Inspector. Any employee of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Administrator to enforce this subpart.

Interstate. From any State into or through any other State.

Limited permit. A document, in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.78–5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

Mediterranean fruit fly. The insect known as Mediterranean fruit fly *Ceratitis capitata* (Wiedemann) in any stage of development.

Moved (Move, Movement). Shipped, offered for shipment, received for transportation, transported, carried, moved, or allowed to be moved.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Quarantined area. Any State, or any portion of a State, listed in § 301.78–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.78–3(b) of this subpart.

Regulated article. Any article listed in § 301.78–2 (a) or (b) of this subpart or otherwise designated as a regulated article in accordance with § 301.78–2(c) of this subpart.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any state, territory or possession of the United States.

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

§ 301.78–2 Regulated articles.

The following are regulated articles:

(a) The following fruits, nuts, vegetables and berries:

Almond with husk (*Prunus dulcis* (*P. amygdalus*))
Apple (*Malus sylvestris*)
Apricot (*Prunus armeniaca*)
Avocado (*Persea americana*)
Black Myrobalan (*Terminalia cherbula*)
Cherries (sweet and sour) (*Prunus avium, P. cerasus*)
Citrus citron (*Citrus medica*)
Date (*Phoenix dactylifera*)
Fig (*Ficus carica*)
Grape (*Vitis* spp.)
Grapefruit (*Citrus paradisi*)
Guava (*Psidium guajava*)
Japanese persimmon (*Diospyros kaki*)
Japanese plum (*Prunus salicina*)
Kiwi (*Actinidia chinensis*)
Kumquat (*Fortunella japonica*)
Lemon (*Citrus limon*) (except smooth-skinned lemon of commerce that is cleaned and waxed)
Lime, sweet (*Citrus aurantiifolia*)
Loquat (*Eriobotrya japonica*)
Mandarin orange (*Citrus reticulata*) (tangerine)
Mango (*Mangifera indica*)
Mock orange (*Murraya exotica*)
Mountain apple (*Syzigium malaccense* (*Eugenia malaccensis*))
Natal plum (*Carissa macrocarpa*)
Nectarine (*Prunus persica* var. *nectarina*)
Olive (*Olea europea*)
Opuntia cactus (*Opuntia* spp.)
Orange, calamondin (*Citrus reticulata* x. *Fortunella*)
Orange, Chinese (*Fortunella japonica*)
Orange, king (*Citrus reticulata* x. *C. sinensis*)
Orange, sweet (*Citrus sinensis*)
Orange, Unshu (*Citrus reticulata* var. *Unshu*)
Papaya (*Carica papaya*)
Peach (*Prunus persica*)
Pear (*Pyrus communis*)
Pepper (*Capsicum frutescens, C. annuum*)
Pineapple guava (*Feijoa sellowiana*)
Plum (*Prunus americana*)
Pomegranate (*Punica granatum*)
Prune (*Prunus domestica*)
Pummelo (*Citrus grandis*)
Quince (*Cydonia oblonga*)
Rose apple (*Eugenia jambos*)
Sour orange (*Citrus aurantium*)
Spanish cherry (Brazilian plum) (*Eugenia dombeyi* (*E. brasiliensis*)
Strawberry guava (*Psidium cattleianum*)
Surinam cherry (*Eugenia uniflora*)
Tomato (pink and red ripe) (*Lycopersicon esculentum*)
Walnut with husk (*Juglans* spp.)
White sapote (*Casimiroa edulis*)
Yellow oleander (Bestill) (*Thevetia peruviana*)

Any fruits, nuts, vegetables, or berries that are canned or dried or frozen below −17.8 °C. (0 °F.) are not regulated articles.

(b) Soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, or berries listed in paragraph (a) of this section.

(c) Any other product, article, or means of conveyance, not covered by paragraph (a) or (b) of this section, that presents a risk of spread of the Mediterranean fruit fly and an inspector notifies the person in possession of it that the product, article, or means of conveyance is subject to the restrictions of this subpart.

§ 301.78–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator shall list as a quarantined area in paragraph (c) of this section, each State, or each portion of a State, in which the Mediterranean fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Mediterranean fruit fly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the Mediterranean fruit fly.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing such area. The Administrator will give a copy of this regulation along with a written notice of this temporary designation to the owner or person in possession of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation shall be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas:

California

Los Angeles County

That portion of the county in the Elysian Park area bounded by a line drawn as follows: Beginning at the intersection of U.S. Highway 101 and Barham Boulevard; then northerly along this boulevard to its intersection with Forest Lawn Drive; then northeasterly along this drive to its intersection with State Highway 134; then easterly along this highway to its intersection with Interstate Highway 5; then southerly along Interstate Highway 5 to its intersection with Colorado Boulevard; then easterly along this boulevard to its intersection with Eagle Rock Boulevard; then southwesterly along Eagle Rock Boulevard to its intersection with York Boulevard; then southeasterly along York Boulevard to its intersection with Figueroa Street; then southwesterly along this street to its intersection with Avenue 60; then southeasterly along this avenue to its intersection with Monterey Road; then southerly along this road to its intersection with Huntington Drive North; then southwesterly along this drive to its intersection with Soto Street; then southwesterly along this street to its intersection with Whittier Boulevard; then westerly along this boulevard to its intersection with 6th Street; then northwesterly along this street to its intersection with Broadway; then southwesterly along Broadway to its intersection with Interstate Highway 10; then westerly along this highway to its intersection with Western Avenue; then north along this avenue to its intersection with Venice Boulevard; then westerly along this boulevard to its intersection with Crenshaw Boulevard; then northeasterly along this boulevard to its intersection with Olympic Boulevard; then westerly along this boulevard to its intersection with Highland Avenue; then northerly along this avenue to its intersection with U.S. Highway 101; then northwesterly along this highway to the point of beginning.

§ 301.78–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area [2] only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.78–5 and 301.78–8 of this subpart;

(b) Without a certificate or limited permit, if:

(1) The regulated article originated outside of any quarantined area and is moved through (without stopping except for refueling, or for traffic conditions, such as traffic lights or stop signs) the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Mediterranean fruit flies (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area, and

[2] Requirements under all other applicable federal domestic plant quarantines and regulations must also be met.

(2) The point of origin of the regulated article is indicated on the waybill and the enclosed vehicle or the enclosure which contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

(c) Without a certificate or limited permit, if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the permit and found by the Administrator to be adequate to prevent the spread of Mediterranean fruit fly; and,

(4) With a tag or label bearing the number of the permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

§ 301.78-5 Issuance and cancellation of certificates and limited permits.

(a) A certificate shall be issued by an inspector [3] for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.78-10 of this subpart; or

(ii) Based on inspection of the premises of origin, that the premises are free from the Mediterranean fruit fly; or

(iii) Based on inspection of the regulated article, that it is free of Mediterranean fruit fly; and

(2) The regulated article will be moved through the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Mediterranean fruit fly; and

(3) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd),[4] to prevent the spread of the Mediterranean fruit fly; and

(4) The regulated article is eligible for unrestricted movement under all other federal domestic plant quarantines and regulations applicable to the regulated articles.

(b) An inspector [5] will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, utilization, or processing (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the Mediterranean fruit fly because life stages of the Mediterranean fruit fly will be destroyed by the specified handling, utilization, or processing;

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd),[6] to prevent the spread of the Mediterranean fruit fly; and

(3) The regulated article is eligible for interstate movement under all other federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for use for interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if an inspector has made the determination that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when an inspector has made the determination that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn by an inspector orally or in writing, if he or she determines that the holder of the certificate or limited permit has not complied with all conditions under this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within ten days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.78-6 Compliance agreement and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this subpart.[7]

(b) Any compliance agreement may be cancelled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart or any conditions imposed pursuant to this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within ten days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.78-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.78-5(c)), who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an

[3] Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Administrator, c/o Domestic and Emergency Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

[4] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides that the Secretary of Agriculture may—under certain conditions—seize, quarantine, treat, destroy, or apply other remedial measures to articles that the Administrator has reason to believe are infested or infected by or contain plant pests.

[5] See footnote 3 to § 301.78-5(a).

[6] See footnote 4 to § 301.78-5(a)(3).

[7] Compliance agreement forms are available without charge from the Administrator, c/o Permits Unit, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories

inspector,[8] as far in advance of the desired interstate movement as possible (no less than 48 hours before the desired interstate movement).

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§ 301.78–8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during the interstate movement, must be attached to the outside of the container containing the regulated article, attached to the regulated article itself if not in a container, or attached to the consignee's copy of the accompanying waybill: *Provided however,* That the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill only if the regulated article is sufficiently described on the certificate or limited permit, and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

§ 301.78–9 Costs and charges.

The services of the inspector during normal business hours (8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The United States Department of Agriculture will not be responsible for any other costs or charges.

§ 301.78–10 Treatments.

Treatment schedules listed in the Plant Protection and Quarantine Treatment Manual to destroy Mediterranean fruit fly can be used on regulated articles. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference." The following treatments can be used for tomato, bell pepper and tomato, and soil:

(a) *Tomato:* Fumigation with methyl bromide at normal atmospheric pressure with 32g/m³ for 3½ hours at 21 °C. (70 °F.) or above.

(b) *Bell pepper and tomato:* Heat the article by saturated water vapor at 44.4 °C. (112 °F.) until approximate center of article reaches 44.4 °C. (112 °F.) and maintain at 44.4 °C. (112 °F.) for 8¾ hours, then immediately cool.

[8] See footnote 3 to § 301.78–5(a).

Note: Commodities should be tested by the shipper to determine each commodity's tolerance to the treatment before commercial treatments are attempted.

(c) *Soil:* Soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, and berries listed in § 301.78–2(a) of this subpart: Apply diazinon at the rate of 5 pounds actual ingredient per acre to the soil within the drip area with sufficient water to wet the soil to a depth of at least ½ inch. Both immersion and pour-on treatment procedures are also acceptable.

Done in Washington, DC, this 23rd day of August 1989.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–20322 Filed 8–28–89; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV–89–035FR]

Raisins Produced From Grapes Grown in California; Increase in Compensation Rate for Handlers' Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases handlers' compensation for receiving, storing, fumigating, and handling reserve tonnage raisins acquired by handlers during a particular crop year and held for the account of the Raisin Adminstrative Committee (RAC) and also for reserve tonnage raisins held beyond the crop year of acquisition under the California raisin marketing order. Handlers' compensation for receiving, storing, fumigating, and handling reserve tonnage raisins will increase from $38.75 per ton to $40.00 per ton. Additional payment for storing, fumigating, and handling reserve tonnage raisins held beyond the crop year of acquisition will also be increased from $1.94 per ton to $2.00 per ton for each month of the three-month period ending November 30, and from $1.00 per ton to $1.03 per ton for each month of the next nine months. This action was recommended by the RAC, which is responsible for local administration of the order. The changes more closely reflect current industry costs.

EFFECTIVE DATE: August 29, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Order Adminisration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 382–1754.

SUPPLEMENTARY INFORMATION:

This final rule is issued under Marketing Agreement and Order No. 989 [7 CFR part 989) both as amended, regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of producers and a minority of handlers of California raisins may be classified as small entities.

This final rule increases handlers' compensation under the California raisin marketing order. This action will increase the rates at which handlers are paid for receiving, storing, fumigating, and handling reserve tonnage raisins and also for reserve tonnage raisins held by handlers beyond the crop year of acquisition for the account of the RAC. Both of these changes were recommended by the RAC.

The marketing order authorizes, for the total annual California raisin crop, the establishment of final free and reserve percentages for volume regulation purposes. Raisins in the reserve percentage category must be held by handlers in a reserve pool on handlers' premises for the account of the RAC. Currently, for example, handlers are free to market 70 percent of the Natural (sun-dried) Seedless raisins they receive and must hold 30 percent in reserve.

This final rule will increase the compensation rate for receiving, storing, fumigating, and handling reserve tonnage raisins acquired by handlers during a particular crop year and held for the account of the RAC and for reserve tonnage raisins held by handlers beyond the crop year of acquisition for the account of the RAC. Since August 1, 1983, handlers have been compensated at a rate of $38.75 per ton for providing these services. Additional payment for reserve tonnage raisins held beyond the crop year of acquisition has been $1.94 per ton for each month of the three-month period ending November 30 and $1.00 per ton for each month of the next nine months.

The RAC conducted a survey among handlers on the cost of receiving, storing, fumigating, and handling the 1988–89 raisin reserve pool. The RAC determined that costs ranged from approximately $30.00 per ton to approximately $57.00 per ton. Therefore, the RAC recommended that the compensation rate be increased from $38.75 per ton to $40.00 per ton to more closely reflect increases in the costs for handlers to provide services on reserve pool raisins. In addition, the RAC recommended that payment to handlers for reserve held beyond the end of the crop year be increased proportionately. Therefore, additional payment for reserve tonnage raisins held beyond the crop year of acquisition will be increased from $1.94 per ton to $2.00 per ton for each month of the three-month period ending November 30 and from $1.00 per ton to $1.03 per ton for each month of the next nine months.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule (54 FR 29343) was published in the **Federal Register** on July 12, 1989, and public comments were invited for a period of 15 days, during which interested individuals had the opportunity to comment on the proposed requirement. No comments were received.

After consideration of all relevant matter presented, including the RAC's recommendation and other available information, it is found that the changes hereinafter set forth will tend to effectuate the declared policy of the Act.

It is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). This action will relax restrictions on handlers by increasing the compensation rate for receiving, storing, fumigating, and handling reserve tonnage raisins acquired by handlers during a particular crop year and held for the account of the RAC and also for reserve tonnage raisins held beyond the crop year of acquisition. It should be effective as soon as possible since August 1 is the beginning of the 1989–90 crop year.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR part 989 is to be revised to read as follows:

Note [*This section will appear in the Code of Federal Regulations.*]

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

AUTHORITY: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

Subpart—Schedule of Payments

2. Paragraphs (a)(1) and (b) of § 989.401 are revised to read as follows:

§ 989.401 Payments for services performed with respect to reserve tonnage raisins.

(a) *Payment for crop year of acquisition*—(1) *Receiving, storing, fumigating, and handling.* Each handler shall be compensated at a rate of $40.00 per ton (natural condition weight at the time of acquisition) for receiving, storing, fumigating, and handling the reserve tonnage raisins, as determined by the final reserve tonnage percentage, acquired during a particular crop year and held by the handler for the account of the Raisin Administrative Committee during all or any part of the same crop year.

(2) * * *

(b) *Additional payment for reserve tonnage raisins held beyond the crop year of acquisition.*

Additional payment for reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler holding such raisins for the account of the Committee on August 15 and the following September 1 shall be compensated for storing, handling and fumigating such raisins at the rate of $2.00 per ton per month, or any part thereof, for each month of the three-month period ending November 30, and $1.03 per ton per month, or any part thereof, for each month of the next nine months. Such services shall be completed so that the Committee is assured that the raisins are maintained in good condition.

* * * * *

Dated: August 24, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–20321 Filed 8–28–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89–AWP–8]

Revision of Los Alamitos, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the shape and dimensions of the Los Alamitos Control Zone where it adjoins the Long Beach, California Control Zone. Due to weather reporting and communications requirements when Los Alamitos is not activated, the control zone will not be under jurisdiction of Long Beach, California, but will revert to public use.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–0433.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1989, the FAA proposed

to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Los Alamitos, CA, control zone (54 FR 15776). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The U.S. Army did not concur. They expressed concern due to the absence of controlled airspace for safety of flight below the 700 foot transition area for special flights occurring after Los Alamitos is closed when the control zone is not effective. Long Beach is unable to provide the necessary service to aircraft transiting this control zone. When Los Alamitos is not activated, the Los Alamitos control zone will revert to public use.

The Rule

This amendment to part 71 of the FAR revises the shape and lateral dimensions of the Los Alamitos Control Zone. Control jurisdiction of this control zone will no longer revert to Long Beach when Los Alamitos is not activated. Required are hourly and special weather observations during the times and dates a control zone is activated, taken on the airport upon which the control zone is designated. Long Beach is unable to provide the necessary service to aircraft transiting this control zone. When Los Alamitos is not activated, the Los Alamitos control zone will revert to public use.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (71 FR 171), is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Los Alamitos, CA [REVISED]

Within a 5-mile radius of Los Alamitos Armed Forces Reserve Center (lat. 33°47'30" N., long. 118°02'50" W). Excluding that portion within the Long Beach, CA, control zone, and excluding the portion within a 1-mile radius of Meadowlark Airport (alt. 33°43'08" N., long. 118°02'13" W). This control zone is effective from 0700 to 2200 hours local time daily, or during specific times and dates established in advance by a Notice to Airmen which will be continuously published in the *Airport/Facility Directory*.

Issued in Los Angeles, California, on July 28, 1989.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 89–20270 Filed 8–28–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–AWP–7]

Revision of Long Beach, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the shape and dimensions of the Long Beach Control Zone. Due to weather-reporting and communications requirements, this action eliminates the assumption of the Los Alamitos Control Zone by Long Beach when Los Alamitos is not activated.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–0433.

SUPPLEMENTARY INFORMATION:

History

On May 19, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Long Beach, CA, control zone dimensions and eliminate the assumption of Los Alamitos control zone when Los Alamitos is not effective (54 FR 21629). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposals to the FAA. The U.S. Army did not concur, expressing concern at the absence of controlled airspace for safety of flight below the 700 foot transition area for special flights occurring after Los Alamitos is closed when the control zone is not effective. Long Beach is unable to provide the necessary service to aircraft transiting the Los Alamitos Control Zone. For these reasons, when Los Alamitos is not activated, the Los Alamitos control zone will revert to public use.

The Rule

This amendment to Part 71 of the FAR revises the lateral dimensions of the Long Beach Control Zone. The assumption by Long Beach of the Los Alamitos Control Zone when Los Alamitos is not active is eliminated. Hourly and special weather reporting is required during the times and dates a control zone is designated, based on the airport upon which the control zone is designated. Long Beach is unable to provide the necessary service to aircraft transiting the Los Alamitos Control Zone. For these reasons, when Los Alamitos is not activated, the Los Alamitos control zone will revert to public use.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Polices and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (71 FR 171), is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. § 71.171 is amended as follows:

Long Beach, CA [REVISED]

Within a 5-mile radius of Long Beach Municipal Airport (lat. 33°49'07"N., long. 118°09'04"W). This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will, thereafter, be continuously published in the *Airport/Facility Directory*.

Issued in Los Angeles, California, on July 28, 1989.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 89-20271 Filed 8-28-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 88F-0024]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for an increase in the maximum level of mineral oil that may be used in certain repeated-use rubber articles intended for contact with food. This action is in response to a petition filed by Monsanto Chemical Co.

DATES: Effective August 29, 1989; written objections and requests for a hearing by September 28, 1989.

ADDRESSS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 1, 1988 (53 FR 6203), FDA announced that a food additive petition (FAP 8B4058) had been filed by Monsanto Chemical Co., 800 North Lindbergh Boulevard, St. Louis, MO 63166, proposing that § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) be amended to provide for an increase in the maximum level of mineral oil that may be used in certain repeated-use rubber articles intended for contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that 21 CFR 177.2600(c)(4)(iv) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before September 28, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitite a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.2600 is amended in paragraph (c)(4)(iv) by revising the paragraph heading and the entry for "Mineral oil" to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(iv) *Plasticizers (total not to exceed 30 percent by weight of rubber product unless otherwise specified).*

* * * * *

Mineral oil; (1) In rubber articles complying with this section, not to exceed 30 percent by weight; (2) Alone or in combination with waxes, petroleum, total not to exceed 45 percent by weight of rubber articles that contain at least 20 percent by weight of ethylene-propylene copolymer elastomer complying with paragraph (c)(4)(i) of this section, in contact with foods of Types I, II, III, IV, VI, VII, VIII, and IX idenified in Table 1 of § 176.170(c) of this chapter.

* * * * *

Dated: August 8, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-20234 Filed 8-28-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218-AA 82

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of administrative stay.

SUMMARY: On December 4, 1987, the Occupational Safety and Health Administration (OSHA) published a final rule in the Federal Register on occupational exposure to formaldehyde (29 CFR 1910.1048, 52 FR 46168). In response to numerous public comments which indicated confusion about the hazard warning provisions of the newly revised Formaldehyde Standard, on December 18, 1988, OSHA announced an administrative stay of paragraphs (m)(1)(i) through (m)(4)(ii) for a period of nine months. OSHA also announced its intention to revoke paragraphs (m)(1)(i) through (m)(4)(ii) and invite comments on replacing them with the Hazard Communication Standard (29 CFR 1910.1200) or another equally protective alternative which would be less confusing to the public (53 FR 50198).

OSHA has not yet completed work on certain proposed amendments to the Hazard Communication Standard (see 53 FR 29822, 8/8/88). These amendments are relevant to the decision as to whether it would be appropriate to substitute the amended Hazard Communication Standard for stayed paragraph (m)(1)(i) through (m)(4)(ii) of the Formaldehyde Standard. Consequently OSHA is extending the stay an additional nine months and will consider further developments in the Hazard Communication rulemaking in determining what regulatory action to propose on formaldehyde. While this stay is in effect, affected employers must continue to comply with the provisions of OSHA's Hazard Communication Standard.

EFFECTIVE DATE: The administrative stay of 29 CFR 1910.1048 (m)(1)(i) through (m)(4)(ii) will be effective until June 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8151.

Authority and Signature

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210.

This action is taken pursuant to section 4(b), 6(b), and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1599; 29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 9-83 (48 FR 35736) and 29 CFR part 1911.

List of Subjects in 29 CFR Part 1910

Formaldehyde, Occupational safety and health, Chemicals, Cancer, Health, Risk assessment.

§ 1910.1048 [Stayed in part]

Therefore, 29 CFR 1910.1048 (m)(1)(i), through (m)(4)(ii) is stayed until June 13, 1990.

Signed at Washington, DC this 22nd day of August, 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 89-20245 Filed 8-23-89; 8:45 am]

BILLING CODE 4510-26-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal

CFR Correction

In title 29 of the Code of Federal Regulations, part 1927 to end, revised as of July 1, 1988, § 2676.13(b)(1), in the portion of paragraph (b)(1) which immediately follows the equation, some of the symbols were incorrectly displayed.

§ 2676.13 [Corrected]

On page 731, in the second column, paragraph (b)(1) is revised to read as follows:

(1) If the payment is not contingent on the survival of any person:

$$v^{0,n}=\left(\frac{1}{1+i_{k+1}}\right)^{j}\cdot\prod_{t=1}^{k}\frac{1}{1+i_t},$$

where $n = k + j$, k is an integer, $0 \leq j < 1$, $v^{0,0} = 1$, and i_k is the interest rate determined under § 2676.15 applicable to the year ending on the kth anniversary of the valuation date.

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 235, 240, 245, 243

Indorsement and Payment of Checks Drawn on the United States Treasury

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This rule amends existing regulations governing the indorsement and payment of checks drawn on the United States Treasury and the processing of claims on Treasury checks. The changes are required by Title X of the Competitive Equality Banking Act of 1987 which: (1) Provides that Treasury may decline payment on a Treasury check unless it is negotiated within one year; (2) provides for the cancellation of Treasury checks outstanding after one year; and (3) decreases the time limit for claims on Treasury checks to be brought by or against the United States.

EFFECTIVE DATE: October 1, 1989.

ADDRESSES: Financial Management Service, Prince Georges Center II Building, 3700 East-West Highway, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Joan Pesata, Director, Limited Payability Project, Financial Management Service, Room 816-C, Prince Georges Center II Building, 3700 East-West Highway, Hyattsville, Maryland 20782; telephone (301) 436-7172, (FTS) 436-7172.

SUPPLEMENTARY INFORMATION: On August 10, 1987, Congress enacted the Competitive Equality Banking Act of 1987 (CEBA), Public Law No. 100-86, 101 Stat. 552, 659. Title X of CEBA changed the laws governing the payment of checks drawn on the United States Treasury and the filing of claims on

account of Treasury checks. Formerly, Treasury checks were payable without limitation of time. Under CEBA, Treasury is not required to pay a Treasury check issued on or after the effective date of the legislation unless it is negotiated to a financial institution within 12 months after the date of issuance of the check. Treasury is not required to pay a Treasury check issued before the effective date of the legislation unless it is negotiated to a financial institution within 12 months after the effective date. Checks outstanding more than one year are to be cancelled.

Formerly, a claim on a paid Treasury check could be brought for 6 years from the date of payment. Under CEBA, any claim on account of a Treasury check is barred unless presented to the agency that authorized the issuance of the check within one year after the date of issuance. Claims on checks issued before the effective date of the legislation must be filed within one year after the effective date. CEBA reduces the period during which Treasury may reclaim the amount of a check which has been paid over a forged or unauthorized indorsement.

Section 1005 of Title X of CEBA authorizes the Secretary of the Treasury to prescribe rules, regulations and procedures as he deems necessary to implement the amendments made by sections 1002, 1003 and 1004, including the recertification of Treasury checks which have been cancelled or for which a claim has been asserted or barred. Sections 1002, 1003 and 1004 of Title X of CEBA were to be effective 6 months after enactment or on such later date as the Secretary of the Treasury prescribed. In the February 8, 1988, Federal Register (53 FR 3584), Treasury set October 1, 1989 as the effective date.

Pursuant to CEBA, in the March 13, 1989, Federal Register (54 FR 10366), Treasury issued a Proposed Rule to amend the regulations governing the payment of checks and check claims.

Response to Comments

Five comments were received from Federal agencies and fourteen comments were received from financial institutions or other organizations. Two agencies were concerned that the amendments will increase agency responsibilities for agency payments and agency collections. One effect of CEBA is to make agencies more responsible for the financial consequences of their programs. This effect is reflected in the amendments. Other agency comments involved interagency procedural relationships. Such interagency matters will be addressed in specific implementing instructions and Volume I, Part 4 of the Treasury Financial Manual.

Many financial institution comments expressed support for the rulemaking. Other comments addressed regulations unaffected by CEBA or the amendments. These remarks have been forwarded to appropriate Treasury offices. Several comments concerned the need for a strong public awareness campaign in conjunction with the publication of the final rule. Over the past two years, the Financial Management Service (FMS) has conducted a broad public awareness effort, targeting the major audiences affected. FMS has worked with Federal agencies and with organizations representing large segments of check recipients to enlist their assistance in educating payees and constituents. The awareness effort included liaison with Federal Reserve Banks (FRBs) and banking organizations to reach member financial institutions. In addition, a series of news articles is scheduled for publication in August and September 1989.

One financial institution requested reimbursement procedures when a check is received for deposit and funds are paid out after the one year negotiability period and no recourse is available to the depositor's account. The financial institution will be able to ascertain from the face of the check if a check is not properly payable pursuant to § 240.3. Financial institutions that accept checks which are not properly payable do so at their own risk.

One comment stated that the term "Commission" in §§ 240.4(a)(3) and 240.6(d) should be "Commissioner." The term was corrected to "Commissioner" in the above-cited sections of the final rule.

The following is a section by section discussion of the remaining comments made to specific sections of the final rule.

Section 240.3 Limitations on Payment

1. *Comment:* Several comments offered alternatives to the legend "Void After One Year." One comment suggested a specific placement and size of the legend.

Response: Available space on the check restricted the length of the legend, but "Void After One Year" is one of many legend variations in common use. CEBA does not require that a legend appear on the checks. In addition to the constructive notice in § 240.3, the legend will be actual notice to payees and indorsers of a general limitation on the payment and negotiability of Treasury checks. The regulations provide that the legend, or inadvertent lack thereof, does not limit, or otherwise affect, the rights of the Commissioner under the law. When new check stock is ordered, delivered, and used, the legend will appear printed on the blank check stock. Until existing check stock is depleted, the legend will be typed on the check stock at the same time that other fields of information are included.

2. *Comment:* One comment requested a definition of the 12 month negotiability period.

Response: The period of negotiability, which begins on the date of issuance printed on the check, extends for 12 months. The check must be negotiated within one year from the date printed on the check. For example, a check issued dated October 31, 1989, must be negotiated on, or before, October 30, 1990.

Section 240.4 Cancellation and Distribution of the Proceeds of Checks

1. *Comment:* One comment offered that the regulations should specify that cancellation applies to any check that has not been accepted for payment, or deposit, by a financial institution.

Response: The cancellation of a check that remains outstanding for more than twelve (12) months from the later of the date of issuance or October 1, 1989 will occur at the end of the fourteenth (14) month. Based on current FRBs processing time for Government checks, the time period between the negotiation and cancellation and distribution of proceeds allows for the processing of checks through the FRBs and Treasury's payment system.

2. *Comment:* One comment stated that § 240.4(b) should include a provision requiring Treasury to maintain records related to checks dated prior to October 1, 1989 that will be cancelled.

Response: Information on Treasury's record retention policy is included in § 245.7.

Section 240.6 Reclamation of Amounts of Paid Checks

1. *Comment:* One comment recommended that the term "date of payment" be defined for reclamations under this section.

Response: Section 240.6(d) states the time period for reclamations. The language of § 240.6(d) is specific to the governing statute and will remain unchanged. As described in the summary to the proposed rules, Treasury may reclaim within one year after the date of payment. For purposes of this section, Treasury considers the date of payment to be the date on which the Federal Reserve Bank gives

provisional credit for the item to the member bank or clearing bank.

2. *Comment:* One comment requested that, where multiple consecutive checks have been issued and fraudulently negotiated, Treasury should reclaim the proceeds from indorsers based on the age of the last check paid, rather than on the date of payment of each check.

Response: The language and intent of CEBA (31 U.S.C. 3712(a)(1)) is contrary to the recommendation. The reclamation period will not be extended on the basis described.

3. *Comment:* One comment stated that the term "provisional credit" used on section 240.6 is obsolete and should be replaced with "credit."

Response: "Provisional credit" appears in the summary and comment of the rule, but is not used in the text of the regulation. In the context of Treasury procedures, the term "provisional credit" accurately reflects the processing for payment of Treasury checks as set forth in § 240.9, whereby FRBs provide immediate credit subject to examination and credit by the United States Treasury.

4. *Comment:* One comment disagreed with the extension of the reclamation period for an additional 180 days beyond the one year period.

Response: The extended time for reclamation does not alter payee claim periods. Rather, CEBA provides the additional 180-day reclamation period in cases where a timely claim was filed under provisions of 31 U.S.C. 3702. The additional time allows for administrative processing and for the time necessary to obtain documentation supporting a forgery claim.

Section 240.9 Processing of Checks

1. *Comment:* One comment indicated that § 240.9(a)(2), appeared to have omitted the word "not".

Response: In the proposed rule the word "not" was inadvertently omitted from § 240.9(a)(2). A correction was published on May 18, 1989, at 54 FR 21527.

2. *Comment:* One comment requested that Treasury be required to return a certified true copy of the check when payment is refused.

Response: By agreement with the FRBs, when payment of a check is refused for the reason that it was negotiated more than 12 months after the date on which the check was issued, the original check will be returned through the line of endorsers.

Section 240.11 Indorsement by Payees

Comment: One comment disagreed with the change which places responsibility for the redesignation of survivor(s) as payees of a check with the agency, rather than with Treasury.

Response: The present language of § 240.10(f) will be retained in the final rule at § 240.11(f). Thus, the responsibility for redesignation of survivor(s) as payees of a check remains unchanged from present regulations.

Section 245.1 Introductory

Comment: One comment questioned Treasury's authority to issue regulations on the recertification of Treasury checks which have been cancelled or for which a claim has been asserted or barred.

Response: "Treasury may prescribe such rules, regulations, and procedures as the Secretary deems necessary to implement the amendments made by sections 1002, 1003, 1004, including the recertification of Treasury checks which have been cancelled or for which a claim has been asserted or barred." CEBA, Public Law No. 100–86, 101 stat. 552, 659.

Section 245.2 Definitions

Comment: One commenter stated that the definition of "replacement check" should be supplemented by a definition of "settlement check."

Response: Section 245.2(f) defines "replacement check" as "a check issued pursuant to the recertification of payment by a certifying official." This definition accurately reflects the implementation of CEBA and the process of recertifying Treasury checks and will remain unchanged.

Section 245.3 Time Limit for Check Claims

1. *Comment:* One comment suggested clarification of the fact that the new limitation on negotiability of Government checks does not affect the person's entitlement to payment. The commenter stated that they believe that § 245.3(a) and § 245.3(c) are contradictory.

Response: A claim on account of a Treasury check is distinct from a claim on the underlying obligation. The language of §§ 245.3(a) and 245.3(c) is consistent and accurately reflects the statutory language of CEBA.

2. *Comment:* One comment stated that the proposed mechanism for making a claim pursuant to section 245 does not appear to operate for checks which have been cancelled pursuant to § 240.4.

Response: Section 245.3(a) provides that any claim on account of a Treasury check must be presented to the agency that authorized the issuance of such check within one year after the date of issuance of the check or within one year after October 1, 1989, whichever is later. Section 240.4 provides that checks, that have not been paid and remain outstanding for more than 12 months, shall be cancelled either 12 months from October 1, 1989, pursuant to § 240.4(a), or no later than April 1, 1991, pursuant to § 240.4(b). The period for claims on account of a Treasury check will end before the cancellation period. The provisions do not present a conflict.

Section 245.5 Recertification.

1. *Comment:* Four commenters stated that implementation of section 245.5 should be delayed.

Response: Section 245.5 applies to Federal agencies and implements agency recertification under CEBA. By specific arrangement with the Treasury, where operational and system limitations compel a phased integration, agency responsibilities under recertification may be temporarily assisted by Treasury.

2. *Comment:* Two commenters stated that payee forgery claims should be settled by Treasury's use of the Check Forgery Insurance Fund.

Response: As the later enacted statute, specific to the issues of check claims, payments, and reclamations, the 1987 enactment of CEBA is the controlling law with respect to these issues. Regulatory amendments, issued under authority of CEBA, explicitly confirm and expand upon existing, longstanding, government-wide policies and processes for check payments and check claims.

Section 245.7 Check Status Inquiry

Comment: Five comments requested that Treasury reconsider the decision to return records to agencies after 18 months beyond a check's issue date.

Response: Section 245.7 has been amended to read, "The Commissioner will provide the status and a copy of the check if available, upon request, to the agency which authorized the issuance of the check."

Section 245.8 Receipt or Recovery of Original Check

Comment: One comment requested that the policy of returning checks to the Treasury continue rather than returning checks to the program agencies.

Response: The section reflects the relationship of the certifying agency to its constituents and the availability of detailed constituent records to the certifying agencies. By specific agreement, FMS Regional Financial Centers may temporarily assist agencies incapable of immediate implementation of this provision.

Except as noted above, the Final Rule is the same as was published as a Proposed Rule in the Federal Register.

Regulatory Procedures

Executive Order 12291

The Treasury Department has determined that this regulation is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193, February 19, 1981). It is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable to this rule because it will not have a significant economic impact on a substantial number of small entities. The regulation will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The regulation is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1510-0058. The estimated average burden associated with the collection of information in this final rule is .167 hours per respondent or recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Financial Management Service at the address previously specified and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for the Financial Management Service.

List of Subjects

31 CFR Part 235

Banks, Banking, Claims, Forgery.

31 CFR Part 240

Banks, Banking, Forgery.

31 CFR Part 245

Banks, Banking, Claims.

31 CFR Part 248

Banks, Banking, Claims, Foreign Banking.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, title 31, chapter II, subchapter A of the Code of Federal Regulations is amended as follows:

PART 235—ISSUANCE OF SETTLEMENT CHECKS FOR FORGED CHECKS DRAWN ON DESIGNATED DEPOSITARIES

1. The authority citation for Part 235 is revised to read as follows:

Authority: 31 U.S.C. 3343.

2. Part 235 is amended by revising the part heading as set forth above.

§ 235.1 [Amended]

3. Section 235.1 is amended by removing "drawn on the United States Treasury and."

§ 235.3 [Amended]

4. Section 235.3 is amended by removing "the Commissioner, Financial Management Service, with respect to a check drawn on the United States Treasury, or."

5. Section 235.6 is revised to read as follows:

§ 235.6 Implementing instructions.

Procedural instructions implementing these regulations will be issued by the Commissioner of the Financial Management Service in volume I, part 4 of the Treasury Financial Manual.

Parts 240 and 245 are revised to read as follows:

PART 240—INDORSEMENT AND PAYMENT OF CHECKS DRAWN ON THE UNITED STATES TREASURY

General Provisions

Indorsement of Checks

Appendix A—Standard Forms for Power of Attorney and Their Application

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3328; 31 U.S.C. 3331; 31 U.S.C. 3343; 31 U.S.C. 3711; 31 U.S.C. 3716; 31 U.S.C. 3717; 332 U.S. 234 (1947); 318 U.S. 363 (1943).

General Provisions

§ 240.1 Scope of regulations.

The regulations in this part prescribe the requirements for indorsement and the conditions for payment of checks drawn on the United States Treasury. These regulations also establish procedures for collection of amounts due the United States Treasury because of payments on checks bearing forged or other unauthorized indorsements or other material defects or alterations.

§ 240.2 Definitions.

(a) *Certifying agency* means an agency for whom a Treasury disbursing officer or a non-Treasury disbursing officer makes payment in accordance with 31 U.S.C. 3325. The responsibilities of a certifying official are set forth at 31 U.S.C. 3528.

(b) *Check* or *Checks* means a check or checks drawn on the United States Treasury.

(c) *Check payment* means the amount paid to a presenting bank in accordance with § 240.9(a)(3) of this part.

(d) *Commissioner* means the Commissioner of the Financial Management Service, Department of the Treasury, 401 14th Street SW., Washington, DC 20227.

(e) *Days* means calendar days.

(f) *Financial institution* means any bank, savings bank, savings and loan association, Federal or State chartered credit union, or similar institution.

(g) *Item* means a reference in a monthly interest billing statement to a check for the amount of which Treasury has demanded refund from a presenting bank.

(h) *Monthly interest billing statement* means a statement prepared by

Treasury and sent to a presenting bank which includes the following information regarding each outstanding demand for refund:

(1) The reclamation date;

(2) The reclamation number;

(3) Check identifying information; and

(4) The balance due, including interest.

(i) *Person* or *persons* means an individual or individuals, or an institution or institutions including all forms of financial institutions.

(j) *Presenting bank* means:

(1) A financial institution which, either directly or through a correspondent banking relationship, presents checks to and receives provisional credit from a Federal Reserve Bank; or

(2) A depositary which is authorized to charge checks directly to the General Account of the United States Treasury and present them to Treasury for payment through a designated Federal Reserve Bank.

(k) *Protest* means a presenting bank's written statement and any supporting documentation tending to prove that it is not liable for refund of the reclamation balance.

(l) *Reclamation* means a demand by Treasury for refund of the amount of a check payment.

(m) *Reclamation date* means the date on which a demand for refund was prepared. Normally, demands are sent to presenting banks within two working days of the reclamation date.

(n) *Treasury* means the United States Treasury.

(o) *U.S. securities* means securities of the United States and securities of Federal agencies and wholly or partially government-owned corporations for which the Treasury acts as the transfer agent.

(p) *Unauthorized indorsement* means:

(1) An indorsement made by a person other than the payee, except as authorized by and in accordance with § 204.5 and §§ 240.11 through 240.15;

(2) An indorsement by a financial institution under circumstances in which the financial institution breaches the guaranty required of it by 31 CFR 209.9(a) (*See*, 31 CFR 209.8); or

(3) A missing indorsement where the depositary bank had no authority to supply the indorsement.

§ 240.3 Limitations on payment.

(a) As a general rule,

(1) The Commissioner shall not be required to pay a Treasury check issued on or after October 1, 1989 unless it is negotiated to a financial institution within 12 months after the date on which the check was issued; and

(2) The Commissioner shall not be required to pay a Treasury check issued before October 1, 1989 unless it is negotiated to a financial institution no later than October 1, 1990.

(b) All checks drawn on the United States Treasury and issued on or after October 1, 1989 shall bear a legend, stating "Void After One Year." The legend is notice to payees and indorsers of a general limitation on the payment of Treasury checks. The legend, or the inadvertent lack thereof, does not limit, or otherwise affect, the rights of the Commissioner under the law.

(c) The Treasury shall have the usual right of a drawee to examine checks presented for payment and refuse payment of any checks. The Treasury shall have a reasonable time to make such examination.

(d) Checks shall be deemed to be paid by the United States Treasury only after first examination has been fully completed.

(e) If the Treasury is on notice of a question of law or fact about whether a Treasury check is properly payable when the check is presented for payment, the Commissioner may defer payment until the Comptroller General settles the question.

§ 240.4 Cancellation and distribution of proceeds of checks.

(a) *Checks issued on or after October 1, 1989.* (1) Any check issued on or after October 1, 1989 that has not been paid and remains outstanding for more than 12 months shall be cancelled by the Commissioner.

(2) The proceeds from checks cancelled pursuant to paragraph (a) of this section shall be returned to the agency which authorized the issuance of the check and credited to the appropriation or fund account initially charged for the payment.

(3) Beginning January 1, 1991, and monthly thereafter, the Commissioner shall provide to each agency that authorizes the issuance of Treasury checks a list of those checks issued for such agency which were cancelled during the preceding month pursuant to paragraph (a) of this section.

(b) *Checks issued before October 1, 1989.* (1) Any check issued before October 1, 1989 that has not been paid and remains outstanding for more than 12 months shall be cancelled by the Commissioner no later than April 1, 1991.

(2) The proceeds from checks cancelled pursuant to paragraph (b) of this section shall be applied as required by 31 U.S.C. 3334.

§ 240.5 Guaranty of indorsements.

The presenting bank and the indorsers of a check presented to the Treasury for payment are deemed to guarantee to the Treasury that all prior indorsements are genuine, whether or not an express guaranty is placed on the check. When the first indorsement has been made by one other than the payee personally, the presenting bank and the indorsers are deemed to guarantee the Treasury, in addition to other warranties, that the person who so indorsed had unqualified capacity and authority to indorse the check on behalf of the payee.

§ 240.6 Reclamation of amounts of paid checks.

(a) If, after a check has been paid by Treasury, it is found to:

(1) Bear a forged or unauthorized indorsement; or

(2) Contain any other material defect or alteration which was not discovered upon first examination, then, upon demand by the Treasury in accordance with the procedures specified in § 240.7 of this part, the presenting bank or other indorser shall refund the amount of the check payment.

(b) Interest on any unpaid item shall commence to accrue on the sixty-first day after the reclamation date. Interest shall be calculated at the rate set from time to time for purposes of 31 U.S.C. 323. Interest shall continue to accrue until the amount demanded is paid or the reclamation is abandoned by Treasury.

(c) In addition to its right to recover interest, Treasury shall have the right to recover such other applicable charges *(e.g.,* administrative collection costs, late payment penalties) as may be authorized or required by law.

(d) If the Treasury determines that a check has been paid over a forged or unauthorized indorsement, the Commissioner may reclaim the amount of the check from the presenting bank or any other indorser that breached its guarantee of indorsement prior to:

(1) The end of the one-year period beginning on the date of payment; or

(2) The expiration of the 180-day period beginning on the close of the period described in paragraph (d)(1) of this section if a timely claim under 31 U.S.C. 3702 is presented to the agency which authorized the issuance of the check.

§ 240.7 Demand and protest.

(a) For all reclamations an initial demand for refund of the amount of a check payment will be made by sending a "Request for Refund (Reclamation)," to the presenting bank or any other

indorser. This Request shall advise the presenting bank of the amount demanded and the reason for the demand. Treasury will make follow-up demands by including each unpaid item on at least three monthly interest billing statements sent to the presenting bank. Monthly interest billing statements will identify any unpaid reclamation demands and will also show the amount of any accrued interest for each outstanding reclamation. Any discrepancies should be brought to Treasury's attention immediately at the address listed in paragraph (b) of this section. Monthly interest billing statements will contain or be accompanied by notice to the bank:

(1) That Treasury intends to collect the debt through administrative offset if the reclamation is not paid within 120 days of the reclamation date;

(2) That the bank has an opportunity to inspect and copy Treasury's records with respect to the reclamation;

(3) That the bank may, by filing a protest, request Treasury to review its decision that the bank is liable for the reclamation; and

(4) That the bank has an opportunity to enter into a written agreement with Treasury for the repayment of the amount of the reclamation. A request for a payment agreement must be accompanied by proof that satisfies the Treasury that the requesting bank is unable to repay the entire amount owed at the time that it is due.

(b) Requests for an appointment to inspect and copy Treasury's records with respect to a reclamation and requests to enter into repayment agreements should be sent in writing to: Department of the Treasury, Financial Management Service, Operations Division, Reclamation Branch, Room 700–D, 3700 East-West Highway, Hyattsville, MD 20782.

(c)(1) If a presenting bank wishes to contest its liability for the principal amount demanded, it shall send a protest, *i.e.*, a written statement and copies of all documentary evidence *(e.g.*, affidavits, account agreements, signature cards) and other written information raising a question of law or fact which, if resolved in the bank's favor, would show that the bank is not liable, to: Department of the Treasury, Financial Management Service, Operations Division, Reclamation Branch Room 700–D, 3700 East-West Highway, Hyattsville, MD 20782.

The Director, Operations Division, who has supervisory authority over the Reclamation Branch, or his authorized subordinate, shall consider and decide any protest properly submitted under this paragraph. Neither the Director, Operations Division, nor any of his subordinates, shall have any involvement in the process of making findings or demands under § 240.6(a). In order to be considered, and to be timely, a protest must be received not later than 90 days after the reclamation date. Treasury will refrain from collection in accordance with § 240.8 while a timely protest is being considered. Unresolved protested items will be appropriately annotated on the monthly interest billing statement.

(2) If Treasury accepts the protest, the presenting bank shall be notified in writing that efforts to collect the item and any accrued interest have been abandoned.

(3) If the evidence sent by the presenting bank does not satisfy Treasury that refund of the amount demanded is not required under § 240.6(a), Treasury will notify the presenting bank in writing of its decision that the bank is liable for the amount demanded and the reasons for its decision. If the presenting bank fails to send the amount demanded within 30 days of the date of Treasury's decision, Treasury shall proceed to collect the amount owed in accordance with § 240.8, provided that no offset shall be taken sooner than 120 days after the reclamation date.

(4) If an item, and/or accrued interest relating to that item remains unpaid for 90 days after the reclamation date and if there is no unresolved protest associated with the item, the monthly interest billing statement will be annotated with a notice that the presenting bank has until the next billing date to make payment on the item or be subject to offset thereon.

§ 240.8 Offset.

(a) If an item, and/or accrued interest relating to that item, remains unpaid for 120 days after the reclamation date and the presenting bank has been sent at least one monthly interest billing statement informing it that Treasury intends to collect that item by offset, Treasury may refer the matter to any Federal agency and request that agency to offset the indebtedness and other applicable charges against amounts otherwise owed by the Federal agency to the presenting bank. Monthly interest billing statements will be annotated to identify those specific items that are to be referred to an agency for offset.

(b) If a bank wishes to make payment on an item referred to an agency for offset, it should contact Treasury at the address listed in § 240.7(b) to reduce the possibility of a double collection. If an agency to which an indebtedness is referred in accordance with this paragraph is unable to effect offset in whole or in part, Treasury may then refer the debt to any other agency and request offset in accordance with this paragraph. Treasury designates each agency acting under this paragraph as its designee for the sole purpose of effecting offset. No such designee shall be liable to any party for any loss resulting from its action under this paragraph.

(c) If Treasury is unable to collect an amount owed by use of the offset described in paragraph (a) of this section, Treasury shall take such action against the presenting bank as may be necessary to protect the interests of the United States, including referral to the Department of Justice.

(d) If Treasury effects offset under this section and it is later determined that the presenting bank paid the amount of the reclamation and accrued interest thereon, or that a presenting bank which had timely filed a protest was not liable for the amount of the reclamation, Treasury shall promptly refund to the presenting bank the amount of its payment.

§ 240.9 Processing of checks.

(a) *Federal Reserve Banks.* (1) Federal Reserve Banks shall cash checks for Government disbursing officers when such checks are drawn by the disbursing officers to their own order. Payment of such checks shall not be refused except for alteration or counterfeiting of the check, or forged signature of the drawer.

(2) Federal Reserve Banks shall not be expected to cash Government checks presented directly to them by the general public.

(3) As a depository of public funds, each Federal Reserve Bank shall:

(i) Receive checks from its member banks, nonmember clearing banks, or other depositors, when indorsed by such banks or depositors who guarantee all prior indorsements thereon;

(ii) Give immediate credit therefore in accordance with their current Time Schedules and charge the amount of the checks cashed or otherwise received to the account of the Treasury, subject to examination and payment by the United States Treasury;

(iii) Forward payment records and copies of checks to Treasury; and

(iv) Release the original checks to a designated Federal Records Center upon notification from Treasury. The Treasury shall return to the forwarding Federal Reserve Bank a photocopy of any check the payment of which is refused upon first examination. Federal Reserve Banks shall give immediate credit therefor in the United States

Treasury's account, thereby reversing the previous charge to the account for such check. The Treasury authorizes each Federal Reserve Bank to release the original check to the endorser when payment is refused in accordance with § 240.3(a).

(b) *Depositaries outside of the mainland of the United States.* Banks outside of the mainland of the United States designated as depositaries of public money and permitted to charge checks to the General Account of the United States Treasury shall be governed by the operating instructions contained in the letter of authorization to them from Treasury and shall assume the obligations of presenting banks set forth in §§ 240.5 and 240.6. Checks charged to the General Account of the United States Treasury along with the supporting credit voucher shall be shipped to the Federal Reserve Bank of Richmond. The Treasury shall return to the presenting depositary bank a photocopy of any check the payment of which is refused upon first examination. The depositary bank shall give immediate credit therefor in the General Account of the United States Treasury, thereby reversing the previous charge to the Account for such check. Treasury authorizes the Federal Reserve Bank of Richmond to return to the presenting depositary bank the original check when payment is refused in accordance with § 240.3(a).

§ 240.10 Release of original checks.

An original check may be released to a responsible indorser upon receipt of a properly authorized request showing the reason it is required and that the request is in conformity with all applicable law including the Privacy Act.

Indorsement of Checks

§ 240.11 Indorsement by payees.

(a) *General requirements.* Checks shall be indorsed by the payee or payees named, or by another on behalf of such payees as set forth in this part.

(b) *Checks indorsed by the payee or payees named.* When a check is indorsed by the payee or payees named, the forms of indorsement shall conform to those recognized by general principles of law and commercial usage for negotiation, transfer or collection of negotiable instruments.

(c) *Checks indorsed by another on behalf of the named payee or payees—* (1) *Acceptable indorsement.* The only acceptable indorsement of a check by another on behalf of the named payee or payees (except when a check is indorsed by a financial institution under the payee's or payees' authorization) is one which indicates that the person indorsing is doing so on behalf of the named payee or payees. Such an acceptable indorsement shall include the signature of the indorser and sufficient wording to indicate that the indorser is indorsing on behalf of the named payee or payees, pursuant to authority expressly conferred by or under law or other regulation. An example would be: "John Jones by Mary Jones." This example states the minimum indication acceptable. However, §§ 240.12(a)(1), 240.13(a)(1), and 240.15(d) specify the addition of an indication in specified situations of the actual capacity in which the person other than the named payee is indorsing. Checks indorsed "for collection" or "for deposit only to the credit of the within named payee or payees," are acceptable without any signature. However, in the absence of a signature, the presenting bank will be deemed to guarantee its good title to such checks to all subsequent indorsers and to Treasury.

(2) *Unacceptable indorsement.* The indorsement by another on behalf of the named payee or payees, which consists of the name(s) of the payee(s), whether as purported signature(s) or otherwise, and *not* the signature of the person other than named payee or payees indorsing the check, regardless of the relationship between the indorser and the named payee or payees, will be rebuttably presumed to be a forgery and is unacceptable. The indorsement by a person who purports to indorse for the named payee(s) with an indorsement consisting of the name(s) of the payee(s), whether as purported signature(s) or otherwise, and the indorsing person's signature and no indication of the indorsing person's representative capacity, will create a rebuttable presumption that the indorsing person was not authorized to indorse for the named payee(s). In these circumstances it is the responsibility of the individual or institution accepting a check from a person other than the named payee(s) to determine that such person is authorized and has the capacity to indorse and negotiate the check. Evidence of the basis for such a determination may be required by the Treasury in the event of a dispute.

(d) *Indorsement of checks by a financial institution under the payee's authorization.* When a check is credited by a financial institution to the payee's account under the payee's or payees' authorization, the financial institution may use an indorsement substantially as follows: "Credit to the account of the within-named payee in accordance with the payee's or payees' instructions. XYZ." A financial institution using this form of indorsement will be deemed to guarantee to all subsequent indorsers and to the Treasury that it is acting as an attorney-in-fact for the payee or payees, under the payee's or payees' authorization, and that this authority is currently in force and has neither lapsed nor been revoked either in fact or by the death or incapacity of the payee or payees.

(e) *Indorsement of checks drawn in favor of financial institutions.* All checks drawn in favor of financial institutions, for credit to the accounts of persons designated payment so to be made, shall be indorsed in the name of the financial institutions as payee in the usual manner. Financial institutions receiving and indorsing such checks shall comply fully with Part 209 of this chapter.

(f) *Social Security benefit checks issued jointly to individuals of the same family.* A social security benefit check issued jointly to 2 or more individuals of the same family shall, upon the death of 1 of the joint payees prior to the negotiation of such check, be returned to the Social Security District Office or the Treasury Regional Financial Center. Payment of the check to the surviving payee or payees may be authorized by placing on the face of the check a stamped legend signed by an official of the Social Security Administration or the Treasury Regional Financial Center, redesignating such survivor or survivors as the payee or payees of the check. A check bearing such stamped legend, signed as herein prescribed, may be indorsed and negotiated by the person or persons named as if such check originally had been drawn payable to such person or persons.

§ 240.12 Checks issued to incompetent payees.

(a) *Classes of checks which may be indorsed by guardian or fiduciary.* Where the payee of a check of any class listed in § 240.13(a) has been declared incompetent:

(1) If a check is indorsed by a legal guardian or other fiduciary, such legal guardian or fiduciary shall include, as a part of the indorsement, an indication of the capacity in which the legal guardian or fiduciary is indorsing. An example would be: "John Jones by Mary Jones, guardian of John Jones." When a check indorsed in this fashion is presented for payment by a bank, it will be paid by the Treasury without submission to the Treasury of documentary proof of the authority of the guardian or other fiduciary, with the understanding that evidence of such claimed authority to

indorse may be required by the Treasury in the event of a dispute.

(2) If a guardian has not been or will not be appointed, and if the check:

(i) Was issued in payment of goods and services, tax refunds or redemption of currency, it shall be forwarded for advice to the certifying agency; or

(ii) Was issued in payment of principal or interest on U.S. securities, it shall be forwarded to the Bureau of the Public Debt, Division of Loans and Currency, Washington, DC 20226, with a full explanation of the circumstances.

(b) *Classes of checks which may not be indorsed by guardian or fiduciary.* Where the payee of a check of any other class has been declared incompetent, the check shall not be indorsed by a guardian or other fiduciary. The check shall be returned to the Government agency which certified the payment, with information as to the incompetency of the payee and submission of documentary evidence showing the appointment of the guardian or other explanation in order that a replacement check, and others to be issued subsequently, may be drawn in favor of the guardian.

§ 240.13 Checks issued to deceased payees.

(a)(1) *Classes of checks which may be indorsed by an executor or administrator.* Checks issued for the classes of payments indicated below, the right to which under law does not terminate with the death of the payee, when indorsed by an executor or administrator, shall include, as part of the indorsement, an indication of the capacity in which the executor or administrator is indorsing. An example would be: "John Jones by Mary Jones, executor of the estate of John Jones." Such checks, when presented for payment by a bank, will be paid by the Treasury without the submission of documentary proof of the authority of the executor or administrator, with the understanding that evidence of such claimed authority to indorse may be required by the Treasury in the event of a dispute. The classes of payments to which this subsection refers are:

(i) Payments for the redemption of currencies or for principal or interest on U.S. securities;

(ii) Payments for tax refunds; and

(iii) Payments for goods and services.

(2) If an executor has not been appointed, persons claiming as owners shall return the checks for appropriate handling to the Government agency that certified the payment. If there is doubt as to whether the proceeds of the check or checks pass to the estate of the deceased payee, the checks shall be handled in accordance with paragraph (b) of this section.

(b) *Classes of checks which may not be indorsed by an executor or administrator.* Checks issued for classes of payment other than those specified in paragraph (a) of this section may not be negotiated after the death of the payee, but must be returned to the Government agency that certified the payment for determination whether, under applicable laws, payment is due and to whom it may be made.

§ 240.14 Checks issued to minor payees in certain cases.

Checks issued to minors in payment of principal or interest on U.S. securities may be indorsed by either parent with whom the minor resides, or, if the minor does not reside with either parent, by the person who furnishes his chief support. The parent or other person indorsing in behalf of the minor shall present with the check his signed statement giving the minor's age, stating that the payee either resides with the parent or receives his chief support from the person indorsing in his behalf, and that the proceeds of the checks will be used for the minor's benefit.

§ 240.15 Powers of attorney.

(a) *Specific powers of attorney.* Any check may be negotiated under a specific power of attorney executed after the issuance of the check and describing it in full.

(b) *General powers of attorney.* Checks issued for the following classes of payments may be negotiated under a general power of attorney in favor of an individual, financial institution or other entity:

(1) Payments for the redemption of currencies or for principal or interest on U.S. securities.

(2) Payments for tax refunds, but subject to the limitations concerning the mailing of Internal Revenue refund checks contained in 26 CFR 601.506(b).

(3) Payments for goods and services.

(c) *Special powers of attorney.* Under discussions of the Comptroller General of the United States, classes of checks other than those specified in paragraph (b) of this section may be negotiated under a special power of attorney which names a financial institution as attorney-in-fact, and recites that it is not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to any other person.

(d) *Proof of authority.* Checks indorsed by an attorney-in-fact shall include, as part of the indorsement, an indication of the capacity in which the attorney-in-fact is indorsing. An example would be: "John Jones by Paul Smith, attorney-in-fact for John Jones." Such checks when presented for payment by a bank, will be paid by the Treasury without the submission of documentary proof of the claimed authority, with the understanding that evidence of such claimed authority to indorse may be required by the Treasury in the event of a dispute.

(e) *Revocation of powers of attorney.* Powers of attorney are revoked by the death of the grantor and may also be revoked by notice from the grantor to the parties known, or reasonably expected, to be acting on the power of attorney. Notice of revocation to the Treasury will not ordinarily serve to revoke the power.

(f) *Acknowledgment of powers of attorney.* Where desirable or where required by foreign, state or local law, powers of attorney shall be acknowledged before a notary public or other officer authorized by law to administer oaths generally.

(g) *Seal or certificate of attesting officers.* Where acknowledgment of powers of attorney is desirable or required pursuant to paragraph (f) of this section, seals of attesting officers shall be impressed or stamped upon the power of attorney form, or the power of attorney shall be accompanied by a certificate from an appropriate official showing that the officer was in commission on the date of acknowledgment.

(h) *Forms.* Power of attorney forms issued under this part are listed in the appendix to this part. They may be obtained from the Financial Management Service, Property and Supply Section, Ardmore East Business Center, 3361–L 75th Avenue, Landover, MD 20785.

Appendix A—Standard Forms for Power of Attorney and Their Application

Standard Form 231. A general power of attorney on this form may be executed by an individual, firm, or sole owner, for checks drawn on the United States Treasury, in payment: (1) For redemption of currencies or for principal or interest on U.S. securities, (2) for tax refunds, and (3) for goods and services.

Standard Form 232. A specific power of attorney on this form, which must be executed after the issuance of the check, describing the check in full, may be used to authorize the indorsement of any class of check drawn on the United States Treasury.

Standard Form 233. A special power of attorney on this form naming a financial organization as attorney-in-fact and reciting that it is not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to any other person, may be used for classes of payments

other than those shown under Standard Form 231.

Standard Form 234–5. A general power of attorney may be executed by a corporation for the classes of payment listed under Standard Form 231.

Standard Form 236–7. A specific power of attorney may be executed on this form by a corporation to cover a specific check for any class of payment.

PART 245—CLAIMS ON ACCOUNT OF TREASURY CHECKS

Sec.

Authority: R.S. 3646, as amended; 31 U.S.C. 3328; 31 U.S.C. 3331

§ 245.1 Introductory.

This part governs the issuance of replacement checks for checks drawn on the United States Treasury, when

(a) The original check has been lost, stolen, destroyed or mutilated or defaced to such an extent that it is rendered non-negotiable;

(b) The original check has been negotiated and paid on a forged or unauthorized indorsement, and

(c) The original check has been cancelled pursuant to § 204.4 of this chapter.

§ 245.2 Definitions.

For purposes of this part:

(a) Agency means each authority of the United States for which the Treasury of the United States issues checks or for which checks drawn on the Treasury of the United States are issued.

(b) Check means a check drawn on the United States Treasury.

(c) Certifying Agency means an agency for whom a Treasury disbursing officer or a non-Treasury disbursing officer makes payment in accordance with 31 U.S.C. 3325. The responsibilities of a certifying official are set forth at 31 U.S.C. 3528.

(d) Commissioner means the Commissioner of the Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227.

(e) Person means an individual, a partnership, a corporation, a labor organization, a government or a subdivision or instrumentality thereof, and any other entity to which a check may be issued.

(f) Replacement check means a check issued pursuant to the recertification of payment by a certifying official.

(g) Secretary means the Secretary of the Treasury.

§ 245.3 Time limit for check claims.

(a) Any claim on account of a Treasury check must be presented to the agency that authorized the issuance of such check within one year after the date of issuance of the check or within one year after October 1, 1989, whichever is later.

(b) Any claim by an indorser under § 245.6 will be considered timely if presented to the Commissioner within one year after the date of issuance of the check or within one year after October 1, 1989, whichever is later.

(c) Nothing in this subsection affects the underlying obligation of the United States, or any agency thereof, for which a Treasury check was issued.

§ 245.4 Advice of nonreceipt or loss.

(a) In the event of the nonreceipt, loss or destruction of a check drawn on the United States Treasury, or the mutilation or defacement of such a check to an exent which renders it nonnegotiable, the claimant should immediately notify the agency that authorized the issuance of such check, describing the check, stating the purpose for which it was issued and giving, if possible, its date, amount, Treasury symbol and number.

(b) In cases involving mutiliated or defaced checks, the claimant should enclose the mutilated or defaced check with his communication to the agency.

§ 245.5 Recertification of payment.

Upon receipt of a claim concerning the nonreceipt, loss, destruction, mutilation or defacement of a check, or the cancellation of a check pursuant to § 240.4 of this chapter, the certifying agency may certify a new payment.

§ 245.6 Claim by an indorser.

When one or more Treasury checks are lost, stolen or destroyed in a single incident while in the possession of a person to whom the checks have been negotiated by the payee, and if the checks have not been paid, the Commissioner may issue a replacement check to the person to whom the checks had been negotiated.

§ 245.7 Check status inquiry.

The Commissioner will provide the status and a copy of the check if available, upon request, to the agency which authorized the issuance of the check.

§ 245.8 Receipt or recovery of original check.

(a) If the original check is received or recovered by the claimant after he has requested the agency to issue a replacement check, but before a replacement check has been received, he should immediately advise the agency and hold such check until receipt of instructions with respect to the negotiability of such check.

(b) If the original check is received or recovered by the claimant after a replacement check has been received by him, the original shall not be cashed, but shall be forwarded immediately to the agency that authorized the issuance of such check. Under no circumstances should both the original and replacement checks be cashed.

§ 245.9 Procedural instructions.

The Commissioner of the Financial Management Service may issue procedural instructions, implementing these regulations, in Volume I, Part 4 of the Treasury Financial Manual.

§ 245.10 Performance of functions of the Commissioner.

The Commissioner of the Financial Management Services may authorize any officer of the Treasury Department to perform any of his functions under this part and to redelegate such authority within such limits as the Commissioner may prescribe.

(Approved by the Office of Management and Budget under control number OMB No. 1510–0058)

PART 248—ISSUE OF SUBSTITUTES OF LOST, STOLEN, DESTROYED, MUTILATED AND DEFACED CHECKS OF THE UNITED STATES DRAWN ON ACCOUNTS MAINTAINED IN DEPOSITARY BANKS IN FOREIGN COUNTRIES OR UNITED STATES TERRITORIES OR POSSESSIONS

1. The authority citation for Part 248 is revised to read as follows:

Authority: 31 U.S.C. 3331.

2. Section 248.1 is revised to read as follows:

§ 248.1 Introductory.

This part governs the issuance of substitutes for checks of the United States drawn on United States dollar or foreign currency accounts, maintained with designated depositaries in foreign countries or territories or possessions of the United States. Checks of the United States drawn on such depositaries are

hereafter referred to as "depositary checks."

§ 248.5 [Amended]

3. Section 248.5 is amended by removing "§ 368.4" and adding in its place "§ 248.4."

W.E. Douglas,

Commissioner.

[FR Doc. 89-20242 Filed 8-28-89; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 89-064]

Safety and Security Zones; Temporary Rules

AGENCY: Coast Guard, DOT.

ACTION: Notice of Temporary Rules Issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

DATES: The following list includes safety zones, security zones, and special local regulations that were established between April 1, 1989 and June 30, 1989 and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the past published list.

ADDRESS: The complete text of any temporary regulation may be examined at, and is available on request from, Executive Secretary, Marine Safety Council (G-LRA-2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Novak, Executive Secretary, Marine Safety Council at (202) 267-1477.

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since events and emergencies usually take place without advance notice or warning, timely publication of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the **Federal Register** just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated.

Non-major safety zones, special local regulations, and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period April 1, 1989 through June 30, 1989 unless otherwise indicated.

Docket Number	Location	Type	Date
1-89-022	Arthur Kill between New York & New Jersey	Safety Zone	20 APR 89
1-89-017	New York Harbor, New York, NY	Safety Zone	29 APR 89
1-89-020	East River, New York, NY	Safety Zone	29 APR 89
1-89-031	Hudson River, New York, NY	Safety Zone	13 MAY 89
1-89-032	Norwich Harbor, Greenwich Harbor, CT	Safety Zone	19 MAY 89
1-89-044	Smith Creek, Arthur Kill, NJ	Safety Zone	21 MAY 89
1-89-042	Thames River, CT	Security Zone	24 MAY 89
1-89-028	Hempstead Harbor, North Hempstead, L.I., NY	Safety Zone	26 MAY 89
1-89-029	Coney Island Channel, NY	Safety Zone	27 MAY 89
1-89-030	East River, New York, NY	Safety Zone	28 MAY 89
1-89-046	Jersey City, Hackensack, Hackensack River, NJ	Safety Zone	29 MAY 89
1-89-033	Hudson River, Poughkeepsie, NY	Safety Zone	4 JUN 89
1-89-050	225th St. & Broadway, Harlem River, NY	Safety Zone	5 JUN 89
1-89-051	Port Newark, Newark Newark Bay, NJ	Safety Zone	9 JUN 89
1-89-034	Hudson River, Troy, NY	Safety Zone	10 JUN 89
1-89-43	Long Island Sound, CT	Special Local Regulation.	17 JUN 89
1-89-060	New York Harbor, NY	Security Zone	22 JUN 89
1-89-064	Atlantic Ocean, Branchport, NJ	Security Zone	23 JUN 89
1-89-036	Hudson River, New York, NY	Safety Zone	25 JUN 89
1-89-067	Stamford, CT	Safety Zone	30 JUN 89
2-89-02	Lower Mississippi River, Mile 52.5 to Mile 51.5	Special Local Regulation.	9 JUN 89
COTP Huntington, WV Reg. 89-01	Kanawha River, Mile 81.8 to Mile 82.5	Safety Zone	15 JAN 89
COTP Huntington, WV Reg. 89-02	Kanawha River, Mile 81.8 to Mile 82.5	Safety Zone	16 JAN 89
COTP Huntington, WV Reg. 89-03	Ohio River, Mile 327.5 to Mile 328.5	Security Zone	22 JUN 89
COTP Louisville, KY Reg. 89-01	Louisville, KY	Safety Zone	10 JAN 89
COTP Louisville, KY Reg. 89-02	Louisville, KY	Safety Zone	28 APR 89
COTP Louisville, KY Reg. 89-03	Louisville, KY	Safety Zone	30 APR 89
COTP Louisville, KY Reg. 89-04	Louisville, KY	Safety Zone	2 MAY 89
COTP Louisville, KY Reg. 89-05	Louisville, KY	Safety Zone	20 MAY 89
COTP Louisville, KY Reg. 89-06	Louisville, KY	Safety Zone	28 MAY 89
COTP Louisville, KY Reg. 89-08	Louisville, KY	Safety Zone	18 JUN 89
COTP Louisville, KY Reg. 89-07	Louisville, KY	Safety Zone	24 JUN 89
COTP Louisville, KY Reg. 89-14	Louisville, KY	Safety Zone	24 JUN 89

Docket Number	Location	Type	Date
COTP Memphis, TN Reg. 89-01	Mississippi River, Mile 734.8 to Mile 736.7 & Wolf River Chute, Mile 0.0 to Mile 1.0	Safety Zone	27 MAY 89
COTP Pittsburgh, PA Reg. 89-01	Ohio River, Mile 104.0 to Mile 108.0	Safety Zone	15 FEB 89
COTP Pittsburgh, PA Reg. 89-02	Ohio River, Mile 94.0 to Mile 95.0	Safety Zone	18 FEB 89
COTP Pittsburgh, PA Reg. 89-03	Monongahela River, Mile 38.5 to Mile 39.0	Safety Zone	30 MAY 89
COTP Pittsburgh, PA Reg. 89-05	Ohio River, Mile 114.0 to Mile 124.0	Safety Zone	12 JUN 89
COTP Pittsburgh, PA Reg. 89-04	Ohio River, Mile 42.7 to Mile 44.5	Safety Zone	25 JUN 89
COTP St. Louis, MO Reg. 88-19	St. Louis, MO, Upper Mississippi River, at the upper entrance to the Chain of Rocks Canal, Mile 194.0.	Safety Zone	10 DEC 88
COTP St. Louis, MO Reg. 88-20	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0	Safety Zone	12 DEC 88
COTP St. Louis, MO Reg. 88-21	St. Louis, MO, Upper Mississippi River, Mile 181.0 to Mile 184.0	Safety Zone	14 DEC 88
COTP St. Louis, MO Reg. 88-22	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0	Safety Zone	14 DEC 88
COTP St. Louis, MO Reg. 88-23	St. Louis, MO, Upper Mississippi River, Mile 158.8 to Mile 159.2	Safety Zone	14 DEC 88
COTP St. Louis, MO Reg. 88-24	St. Louis, MO, Upper Mississippi River, Mile 158.8 to Mile 159.2	Safety Zone	16 DEC 88
COTP St. Louis, MO Reg. 88-25	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0	Safety Zone	16 DEC 88
COTP St. Louis, MO Reg. 88-26	St. Louis, MO, Upper Mississippi River, Mile 158.8 to Mile 159.2	Safety Zone	16 DEC 88
COTP St. Louis, MO Reg. 88-27	St. Louis, MO, Upper Mississippi River, Mile 125.0	Safety Zone	17 DEC 88
COTP St. Louis, MO Reg. 88-28	St. Louis, MO, Upper Mississippi River, Mile 170.5 to 171.5	Safety Zone	18 DEC 88
COTP St. Louis, MO Reg. 88-29	St. Louis, MO, Upper Mississippi River, Lock & Dam 26	Safety Zone	18 DEC 88
COTP St. Louis, MO Reg. 88-30	St. Louis, MO, Upper Mississippi River, Mile 183.2 to Mile 183.4	Safety Zone	21 DEC 88
COTP St. Louis, MO Reg. 88-31	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0	Safety Zone	22 DEC 88
COTP St. Louis, MO Reg. 88-32	St. Louis, MO, Upper Mississippi River, Mile 182.0 to Mile 184.0	Safety Zone	23 DEC 88
COTP St. Louis, MO Reg. 88-33	St. Louis, MO, Upper Mississippi River, Mile 182.0 to Mile 184.0	Safety Zone	26 DEC 88
COTP St. Louis, MO Reg. 89-01	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0	Safety Zone	6 JAN 89
COTP St. Louis, MO Reg. 89-02	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0	Safety Zone	10 JAN 89
COTP St. Louis, MO Reg. 89-03	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0	Safety Zone	11 JAN 89
COTP St. Louis, MO Reg. 89-04	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0	Safety Zone	26 JAN 89
COTP St. Louis, MO Reg. 89-05	St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0	Safety Zone	7 FEB 89
COTP St. Louis, MO Reg. 89-06	St. Louis, MO, Upper Missiissippi River, Mile 0.0 to Mile 185.0	Safety Zone	8 FEB 89
5-89-16	Norfolk Harbor, Elizabeth River, Norfolk & Portsmouth, VA	Special Local Regulation.	1 APR 89
5-89-22	Elizabeth River, Norfolk & Portsmouth, VA	Special Local Regulation.	22 APR 89
5-89-29	Town Point Park, Elizabeth River, Norfolk, VA	Special Local Regulation.	10 MAY 89
5-89-33	Lower Chesapeake Bay, Community Beach, West Ocean View, Norfolk, VA	Special Local Regulation.	19 MAY 89
5-89-32	Choptank River, Denton, MD	Special Local Regulation.	20 MAY 89
5-89-36	Approaches to Annapolis Harbor, Spa Creek & Severn River, Annapolis, MD	Special Local Regulation.	27 MAY 89
5-89-40	Annapolis Harbor, Annapolis, MD	Special Local Regulation.	29 MAY 89
5-89-41	Norfolk Harbor, Elizabeth River, Norfolk & Portsmouth, VA	Special Local Regulation.	2 JUN 89
5-89-48	Inner Harbor, Baltimore, MD	Special Local Regulation.	9 JUN 89
5-89-42	Moon Channel Delaware River Trenton, NJ	Special Local Regulation.	18 JUN 89
5-89-53	East Channel, Northwest Harbor Patapsco River, Baltimore, MD	Special Local Regulation.	20 JUN 89
COTP Baltimore, MD Reg. 89-01	Craighill Entrance, Upper Chesapeake Bay	Safety Zone	28 APR 89
COTP Hampton Rds., VA Reg. 89-15	Chesapeake Bay, Off Fort Story, Virginia Beach, VA	Safety Zone	8 MAY 89
COTP Philadelphia, PA Reg. 89-05	Delaware River	Safety Zone	24 JUN 89
COTP Wilmington, NC Reg. 89-001	Bogue Sound & Beaufort Inlet, Morehead City, NC	Safety Zone	5 MAY 89
COTP Wilmington, NC Reg. 89-002	Onslow Bay & Onslow Beach, Camp Lejeune, NC	Safety Zone	15 MAY 89
7-89-001	St. Cloud, FL	Special Local Regulation.	9 APR 89
7-89-011	Fanny Key, Moser Channel Bridge, FL	Special Local Regulation.	29 APR 89
COTP P. Charleston, SC Reg. 89-023.	Ashley River, Charleston, SC	Safety Zone	11 JUN 89
COTP Miami, FL Reg. 89-01	Atlantic Ocean Position 24 33' N, 081 37' W	Security Zone	18 APR 89
COTP Savannah, GA Reg. 89-017	Savannah River, Savannah, GA	Security Zone	12 MAY 89
COTP Savannah, GA Reg. 89-016	Savannah River	Safety Zone	14 MAY 89
COTP Tampa, FL Reg. 89-019	Gulf of Mexico, Fort Myers Beach, Estera Island, FL	Safety Zone	20 MAY 89
COTP Port Arthur, TX Reg. 89-02	Port of Beaumont, TX and Sabine Neches Waterway	Safety Zone	12 MAY 89
COTP Port Arthur, TX Reg. 89-04	Sabine Neches Waterway	Safety Zone	14 MAY 89
COTP Port Arthur, TX Reg. 89-03	Calcasieu, Ship Channel, Channel Light 62	Safety Zone	18 MAY 89
9-89-03	Lake Macatawa, Holland, MI	Special Local Regulation.	19 MAY 89
9-89-12	Lake Erie	Special Local Regulation.	28 MAY 89
9-89-06	Lake Erie, Cleveland, OH	Special Local Regulation.	17 JUN 89
9-89-17	Keweenaw Waterway, MI	Special Local Regulation.	17 JUN 89
COTP Chicago, IL Reg. 89-01	Lake Michigan waters offshore at Chicago Harbor, Burnham Park Harbor, & Chicago River, Chicago, IL.	Security Zone	24 APR 89
COTP Cleveland, OH Reg. 89-01	Cleveland Harbor, Lake Erie	Safety Zone	16 MAY 89
11-89-12	San Diego Channel, San Diego Bay, CA	Special Local Regulation.	28 MAY 89
COTP LA/LB, CA Reg. 89-04	Ports of Los Angeles/Long Beach, CA	Safety Zone	1 APR 89

Docket Number	Location	Type	Date
COTP LA/LB, CA Reg. 89-05	Ports of Los Angeles/Long Beach, CA	Safety Zone	5 JUN 89
COTP Puget Sound, Seattle, WA Reg. 89-01.	500 Yards Around Tugs RANGER/HUNTER/GERONIMO	Safety Zone	26 APR 89
13-89-05	Northern Lake Washington Seattle, WA	Special Local Regulation.	5 MAY 89
COTP Honolulu, HI Reg. 89-02	Mamala Bay, Oahu, HI	Safety Zone	6 MAY 89

Date: August 22, 1989.

Bruce P. Novak,

Executive Secretary, Marine Safety Council.

[FR Doc. 89-20247 Filed 8-28-89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Editorial Amendment of List of Office of Management and Budget Approved Information Collection Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's list of Office of Management and Budget approved information collection requirements contained in the Commission's Rules.

This action is necessary to comply with the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

This action will provide the public with a current list of information collection requirements in the Commission's Rules which have OMB approval.

EFFECTIVE DATE: August 29, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jerry Cowden, Office of Managing Director, (202) 632-7513.

SUPPLEMENTARY INFORMATION:

Order

Adopted: August 1, 1989.
Released: August 10, 1989.

1. Section 3507(f) of the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3507(f), requires agencies to display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

2. Section 0.408 of the Commission's Rules displays the OMB control numbers assigned to the Commission's information collection requirements. OMB control numbers assigned to Commission forms are not listed in this section since those numbers appear on the forms.

3. This Order amends § 0.408 to remove listings of information collections which the Commission has eliminated or to add listings of new information collections which OMB has approved.

4. Authority for this action is contained in section 4(i) of the Communications Act of 1934 (47 U.S.C. 154(i)), as amended, and § 0.231(d) of the Commission's rules. Since this amendment is editorial in nature, the public notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply.

5. Accordingly, *it is ordered,* That § 0.408 of the rules is amended, effective on the date of publication in the **Federal Register.**

6. Persons having questions on this matter should contact Jerry Cowden at (202) 632-7513.

List of Subjects in 47 CFR Part 0

Reporting and recordkeeping requirements.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Part 0 of title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. In 47 CFR 0.408, paragraph (b) is amended by removing § 43.31 and its corresponding OMB control number 3060-0058.

3. In 47 CFR 0.408, paragraph (b) is further amended by adding the following sections and their corresponding OMB control numbers to read as follows:

§ 0.408 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

47 CFR part or section where identified and described	Current OMB Control No.
* * * *	*
2.948	3060-0398
* * * *	*
15.7	3060-0397
* * * *	*
15.117(g)(2)-(3)	3060-0398
* * * *	*
73.3523	3060-0427
73.3524	3060-0423
* * * *	*

[FR Doc. 89-20294 Filed 8-28-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-413, RM-6370]

Radio Broadcasting Services; Ringgold, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of James E. Price, *See* 53 FR 35337, September 13, 1988, this document allots Channel 229A to Ringgold, Georgia, as that community's second local FM service. Channel 229A can be allotted to Ringgold, in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.3 kilometers (3.9 miles) west to avoid a shortspacing to Station WJLA(FM), Channel 228A, Ellijay, Georgia. The coordinates for this allotment are North Latitude 34-54-01 and West Longitude 85-10-37. With this action, this proceeding is terminated.

DATES: Effective October 10, 1989; the window period for filing applications will open on October 11, 1989, and close on November 9, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-413, adopted August 7, 1989, and released August 23, 1989. The full text of this Commission decision is available for inspection and copying during normal

business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—AMENDED

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is revised by adding Ringgold, Georgia, Channel 229A.

Karl A Kensington,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-20289 Filed 8-28-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 173

[Docket No. HM-166V; Amendment Nos. 171-103; 173-214]

RIN No. 2137-AB10

Hazardous Materials; Uranium Hexafluoride

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations (HMR) to permit the transport of uranium hexafluoride (UF_6) in certain packagings that do not meet the requirements of either the American National Standard N14.1-1987 (ANSI N14.1-1987) or the specification for Class DOT-106A multi-unit tank car tanks as required by 49 CFR 173.420, and to permit the transport of depleted UF_6 in packagings filled to a capacity not exceeding 62% by volume at 20 °C (68 °F). This action is necessary to permit the continued use of UF_6 packagings that have been demonstrated to be safe based on exemption experience data.

DATES: Effective date: September 28, 1989. However, compliance with the regulations as amended herein is authorized as of August 29, 1989.

FOR FURTHER INFORMATION CONTACT: Michael E. Wangler, Chief, Radioactive Materials Branch, Technical Division, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4545.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 1987, RSPA published a notice of proposed rulemaking (Docket HM-166V, Notice No. 87-7) in the **Federal Register** (52 FR 25342) which proposed to amend the HMR to permit the transport of UF_6 in certain packagings. These packagings do not meet the requirements of either the American National Standard N14.1-1982 (ANSI N14.1-1982) or the specification for Class DOT-106A multi-unit tank car tanks, as required by § 173.420.

On April 6, 1988, RSPA published a notice (Notice 88-2; 53 FR 11320) containing supplemental proposals to update the regulatory reference of ANSI N14.1 to the 1987 edition and to revise § 173.420(a)(4) to permit the transport of depleted UF_6 in packagings filled to a capacity of 62% by volume. The supplemental proposal to reference the revised ANSI Standard N14.1-1987 rather than ANSI N14.1-1982 was based on the merits of comments received in response to Notice 87-7. Commenters to Notice 87-7 stated that unlike previous ANSI N14.1 standards, N14.1-1987 recognizes certain packagings currently in service, but not specifically covered by an ANSI N14 standard, as acceptable if the packagings are used within their original design limitations and are inspected, tested, and maintained to conform with ANSI N14.1-1987. Additionally, ANSI N14.1-1987 establishes several new packagings and the standards for those packagings.

The supplemental proposal to amend § 173.420(a)(4) to permit the transport of depleted UF_6 in packagings filled to a capacity not exceeding 62% by volume at 20 °C (68 °F) was based on a petition received from the Department of Energy (DOE). A filling limit of 62% of the volumetric capacity is allowed by ANSI N14.1-1987. The current filling limit of 61% of the volumetric capacity was derived from Table 1 of ANSI N14.1-1982.

Prior to issuing a final rule on Notice 88-7, RSPA published a related final rule on September 20, 1988 in the **Federal Register** under Docket HM-190 (52 FR 26548), which amended the requirements for the fabrication, modification and maintenance of the DOT 21PF-1 overpack used in the transport of UF_6 cylinders. In order to provide regulatory consistency between §§ 173.417 and 173.420 in HM-190, RSPA incorporated ANSI N14.1-1987 by reference in § 171.7(d)(4)(iii) and amended §§ 173.417 and 173.420 to remove references to the 1982 edition of ANSI N14.1. That final rule eliminated the need to address that particular issue in this document

RSPA received three comments in response to Notice 87-7 and three comments to the supplemental proposals which are discussed in this document. Two commenters questioned the acceptability of continuing to authorize the use of Class DOT-106A multi-unit tank car tanks. Section 173.420(a)(2)(ii) authorizes UF_6 to be transported in Class DOT-106A multi-unit tank car tanks conforming to §§ 179.300, 179.301 and 179.302. The Model 30A is the industry designation for the Class DOT-106A packaging used for the transport of UF_6. The commenters stated that no ANSI standard has established criteria for the design, fabrication, use, or cleaning of Model 30A packagings. The commenters further noted that the ANSI standards prescribe a Model 30B as a replacement packaging for the Model 30A. One commenter implied that RSPA apparently does not consider the Model 30A to be an acceptable packaging since it does not appear in the table specifying minimum wall thicknesses found in proposed § 173.420(a)(2)(iv)(D). The minimum wall thickness for the Class DOT-106A packagings is found in existing § 179.301 for an existing DOT specification packaging. Therefore, it is unnecessary to respecify its minimum wall thickness in the table.

Another commenter requested that, for purely informational purposes, RSPA include the following statement in § 173.420(a)(2)(iii): "The 30A cylinder is obsolete having been replaced by 30B. After December 31, 1992, the Department of Energy will no longer accept 30A cylinders for filling at their facilities." Through this comment, users of the Model 30A cylinder would be informed that the DOE will not be accepting the Model 30A at its facilities after the specified date.

The focus of this and the other comments on the suitability of the 30A cylinder relates to operational factors, particularly cleaning, rather than transportation safety concerns. RSPA knows of no significant safety problems resulting from use of Class DOT-106A packagings for transporting a number of different materials, including UF_6. Accordingly, RSPA finds no basis to restrict or discontinue the use of this packaging at this time for UF_6 transport. If additional information develops that supports its discontinuance, RSPA will consider further rulemaking in this area.

RSPA is also denying the request that a statement be placed in § 173.420 concerning the acceptance of the Model 30A at DOE facilities because the statement is informational and not regulatory.

A commenter questioned the requirement found in existing § 173.420(a)(2)(ii) that Class DOT–106A packagings must meet the additional special commodity requirements in § 179.302. The commenter pointed out that there are no special commodity requirements in § 179.302 for UF_6 packagings. RSPA agrees with the commenter and the reference to § 179.302 is removed from § 173.420(a)(2)(ii) in this final rule.

Section 173.420(a)(2) contains the requirements on the design, fabrication and marking of cylinders. Section 173.420(b) provides that UF_6 packagings must be inspected, tested and marked in accordance with ANSI N14.1–1987. One commenter stated that the minimum wall thicknesses found in proposed subparagraph (a)(2)(iv)(D) should be placed in paragraph (b). RSPA disagrees with the commenter. The minimum wall thicknesses in proposed subparagraph (a)(2)(iv)(D) are for use as a design criteria for certain cylinders. The minimum wall thicknesses that must be met for continued use of a cylinder are found in ANSI N14.1–1987.

Paragraph 6.3.2 of ANSI N14.1–1987 provides that a cylinder whose wall thicknesses fall below the levels specified in that standard (which are actually the same as those contained in the § 173.420(a)(2)(iii)(D) table) is no longer authorized for use. These requirements for continued use of a cylinder are made applicable by § 173.420(b), which incorporates ANSI N14.1.

RSPA received two comments which were editorial in nature in response to the supplemental proposals. The commenters suggested that the word "may" be changed to "must" in § 173.420(a)(4) and that the word "certified" be added before the words "volumetric capacity" to be consistent with the ANSI N14.1 requirement that the manufacturer certify, in writing, the volumetric capacity of the cylinder. RSPA agrees with these commenters and their suggestions are adopted in this final rule.

Administrative Notices

RSPA has determined that this final rule (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 et seq.). A regulatory evaluation is available for review in the docket. I certify that this regulation will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effects on the States, on the Federal-State relationship or on the distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have Federalism implications as defined in Executive Order 12612.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Regulatory Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Regulatory Agenda.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Incorporation by reference.

49 CFR Part 173

Hazardous materials transportation. Packaging, Radioactive materials.

In consideration of the foregoing, 49 CFR Parts 171 and 173 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, and 1808; 49 CFR Part 1.

2. In § 171.7(d)(4), a new paragraph (iv) is added to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(iv) For purposes of § 173.420(a)(2) of this subchapter, previous editions of American National Standard N14.1 which are also incorporated are titled "Standard for Packaging of Uranium Hexafluoride for Transport," 1971 and 1982 editions

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

4. Section 173.420 is revised to read as follows:

§ 173.420 Uranium hexafluoride (fissile and low specific activity).

(a) In addition to any other applicable requirements of this subchapter, uranium hexafluoride, fissile or low specific activity, must be offered for transportation as follows:

(1) Before initial filling and during periodic inspection and test, packagings must be cleaned in accordance with American National Standard N14.1.

(2) Packagings must be designed, fabricated, inspected, tested and marked in accordance with—

(i) American National Standard N14.1 (1987, 1982 or 1971 edition) in effect at the time the packaging was manufactured;

(ii) Specifications for Class DOT–106A multi-unit tank car tanks (§§ 179.300 and 179.301 of this subchapter); or

(iii) Section VIII, Division I of the ASME Code, provided the packaging—

(A) Was manufactured on or before June 30, 1987;

(B) Conforms to the edition of the ASME Code in effect at the time the packaging was manufactured;

(C) Is used within its original design limitations; and

(D) Has shell and head thicknesses that have not decreased below the minimum value specified in the following table—

Packaging model	Minimum thickness millimeters (inches)
1S, 2S	1.58 (0.062)
5A, 5B, 8A	3.17 (0.125)
12A, 12B	4.76 (0.187)
30B	7.93 (0.312)
48A, F, X, and Y	12.70 (0.500)
48T, O, OM, OM Allied, HX, H, and G	6.35 (0.250)

(3) Uranium hexafluoride must be in solid form.

(4) The volume of solid uranium hexafluoride, except solid depleted uranium hexafluoride, at 20 °C (68 °F.) must not exceed 61% of the certified volumetric capacity of the packaging. The volume of solid depleted uranium hexafluoride at 20 °C (68 °F.) must not

exceed 62% of the certified volumetric capacity of the packaging.

(5) The pressure in the package at 20 °C (68 °F) must be less than 101.3 kPa (14.8 psia).

(b) Packagings of uranium hexafluoride must be periodically inspected, tested, marked and otherwise conform with the American National Standard N14.1–1987.

(c) Each repair to a packaging for uranium hexafluoride must be performed in accordance with American National Standard N14.1–1987.

Issued in Washington, DC on August 21, 1989 under authority delegated in 49 CFR Part 1.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 89–20056 Filed 8–28–89; 8:45am]

BILLING CODE 4910–60–M

Proposed Rules

Federal Register
Vol. 54, No. 166
Tuesday, August 29, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

Performance Awards in the Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: OPM is issuing proposed regulations to require that Senior Executive Service (SES) Performance Review Boards be composed of a majority of career SES members when making recommendations on performance awards for career SES appointees. This action is necessary to assure that the composition of the Boards is the same for performance award purposes as it is when the Boards are making recommendations on performance appraisals of career appointees.

DATES: Comments will be considered if received no later than September 28, 1989.

ADDRESSES: Send or deliver written comments to the Director, Office of Executive Personnel, Office of Executive Administration, Office of Personnel Management, Room 6R48, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Neal Harwood, (202) 632–4486.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 4314(c)(5), Senior Executive Service (SES) Performance Review Boards are specifically required to be composed of a majority of career SES members in the case of an appraisal of a career SES appointee, unless OPM determines that there exists an insufficient number of career appointees available to comply with the requirement. The requirement is reflected in § 430.307(d) of title 5 of the Code of Federal Regulations.

The basis for the requirement was stated in the Report of the Senate Committee on Governmental Affairs on the Civil Service Reform Act of 1978 as follows: "In this way persons who are knowledgeable and directly involved in the day-to-day responsibilities of Federal executives will have a large voice in judging their peers. Their status as career executives will protect the appraisal from being unduly influenced by political considerations." (Report No. 95–969, 95th Congress, 2d Session, p. 81.)

There is no similar, specific requirement in title 5, U.S. Code, when Performance Review Boards are making recommendations on performance awards for career SES appointees under 5 U.S.C. 5384(d). OPM has concluded, however, that in keeping with the spirit of the law, Performance Review Boards should also have a majority career membership when acting on performance awards. The only exception would be when OPM has determined under 5 CFR 430.307(d), which implements 5 U.S.C. 4314(c)(5), that there exists an insufficient number of career appointees available to comply with the requirement for majority career membership when the Boards are making recommendations on performance appraisals. It should be noted that OPM has not previously granted any waivers to the requirement regarding Board composition for performance appraisals.

The annual performance appraisal period for most agencies ends on September 30. Although OPM is aware of only one agency that currently is not in conformity with the proposed regulation, in order to assure that the proposed regulation is effective for this year's performance award recommendations for all of these agencies, the Director of OPM finds that good cause exists for shortening the comment period to 30 days.

E.O. 12291 Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it deals with the SES employees of the Federal Government.

List of Subjects in 5 CFR Part 534

Government employees, Wages.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is proposing to amend 5 CFR part 534 as follows:

PART 534—PAY UNDER OTHER SYSTEMS

1. The authority for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 5351, 5352, 5353, 5361, 5383, 5384, 5385, and 5541.

2. The heading for subpart D is revised and § 534.403(a) is revised to read as follows:

Subpart D—Pay and Performance Awards under the Senior Executive Service

§ 534.403 Performance awards.

(a) This section covers the payment of performance awards to career appointees in the Senior Executive Service (SES).

(1) To be eligible for an award, the appointee's most recent performance rating of record under part 430, subpart C, of this chapter must have been "Fully Successful" or higher.

(2) When making recommendations on performance awards, more than one-half of the membership of a Performance Review Board must be career SES appointees. The only exception is if OPM has determined under § 430.307(d) of this chapter that the Board does not have to have a majority of career members when making recommendations on performance appraisals of career appointees because there exists an insufficient number of career appointees.

* * * * *

[FR Doc. 89–20330 Filed 8–28–89; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Part 630

Absence and Leave; Coverage of DC Government Employees

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Personnel Management published a proposal on February 27, 1985 (50 FR 7922), to amend its leave regulations in 5 CFR Part 630 to

conform with the District of Columbia Comprehensive Merit Personnel System. Final regulations were never issued. The present proposed rule amends some of the same sections of those regulations, but limits the restriction on the applicability of the Federal leave law to DC government employees to that contained in 5 U.S.C. 6301(2)(B). That section defines "employee" for Federal leave purposes as "an individual first employed by the government of the District of Columbia before October 1, 1987."

DATES: Comments must be received on or before October 30, 1989.

ADDRESSES: Send or deliver comments to Barbara L. Fiss, Assistant Director for Pay and Performance Management, Personnel Systems and Oversight Group, Office of Personnel Management, Room 7H30, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Frank Derby, (202) 632–5056.

SUPPLEMENTARY INFORMATION: When our earlier proposed regulations were published, it was our view that DC Law 2–139, which established the District of Columbia Comprehensive Merit Personnel System, ended title 5, U.S.C., leave coverage for DC government employees. However, subsequent opinions by the Comptroller General and the Department of Justice's Office of Legal Counsel (OLC) have clarified the effect of that DC statute. On September 30, 1986, the Comptroller General determined that annual and sick leave are transferable from the DC government to the Federal Government (B–214541). The Comptroller General did not agree that the DC statute had superseded Federal law regarding the transfer of leave by DC government employees. In a subsequent opinion dated October 15, 1987, the Justice Department's Office of Legal Counsel agreed that Federal law had not been superseded.

The Office of Personnel Management then asked the Office of Legal Counsel to rule on the question of lump-sum annual leave payments under 5 U.S.C. 5551 and 6306 to individuals moving to the DC government without a break in service. The question arose in the light of the new definition of "employee" established by section 207(c) of Public Law 99–335 (June 6, 1986), which amended 5 U.S.C. 6301(2)(B) to limit the definition of "employee" for Federal leave purposes to individuals "first employed by the government of the District of Columbia before October 1, 1987."

OLC's opinion of February 10, 1989, states that 5 U.S.C. 5551 and 6306 are unaffected in their applicability to DC government employees by the new definition of "employee." Therefore, under 5 U.S.C. 5551, individuals entering DC government service from Federal service without a break in service should have their leave transferred and are not entitled to a lump-sum annual leave payment. Under 5 U.S.C. 6306, lump-sum monies will have to be repaid if a separated DC government employee enters Federal service before the expiration of the time represented by the lump-sum payment.

The new definition of "employee," which excludes individuals first employed by the DC government on or after October 1, 1987, does, however, affect the transfer of leave for those individuals. Any leave earned by such individuals while employed by the DC government is outside of the Federal leave system. Therefore, there is no statutory or regulatory basis upon which to accept the transfer of that leave upon subsequent employment in the Federal service.

The proposed regulations are intended to clarify the coverage of the Federal annual and sick leave program with respect to former DC government employees. In addition, we are proposing to remove obsolete references in 5 CFR 630.202(b) and 630.502(b)(2) to the U.S. Postal System and the Regional Action Planning Commissions (established under 42 U.S.C. 3182 and abolished by Public Law 97–35). Additional guidance to Federal agencies on pay and leave entitlements in movements between the DC government and Federal agencies will be provided through the Federal Personnel Manual System.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.
Constance B. Newman,
Director.

Accordingly, OPM proposes to amend 5 CFR part 630 as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C 6311; Section 630.303 also issued under 5 U.S.C. 6133(a); Section 630.501 and subpart F also issued under E.O. 11228; subpart G also issued under 5 U.S.C. 6305; subpart H issued under 5 U.S.C. 6325; subpart I also issued under 5 U.S.C. 6332 and Public Law 100–566; subpart J also issued under 5 U.S.C. 6362 and Public Law 100–566.

2. In § 630.202, paragraph (b) is revised to read as follows:

§ 630.202 Full biweekly pay period; leave earnings.

* * * * *

(b) *Part-time employees.* Hours in a pay status in excess of an agency's basic working hours in a pay period are disregarded in computing the leave earnings of a part-time employee

3. In § 630.502, paragraphs (b), (c), and (d)(1) are revised to read as follows:

§ 630.502 Sick leave recredit.

* * * * *

(b) Except as provided in paragraphs (c) and (d) of this section, an employee who is separated from the Federal Government or the government of the District of Columbia for other than retirement purposes is entitled to a recredit of sick leave if reemployed in the Federal Government within 3 years after separation is effected.

(c) An employee who is employed by the Appalachian Regional Commission established under 40 U.S.C. 101, App. A, within 4 calendar days after separation from the Federal Government is entitled to a recredit of sick leave if—

(1) Reemployed by the Federal Government within 6 months after separation from the Commission; and

(2) Employment with the Commission exceeded 2 years and 6 months without a break of more than 3 calendar days.

(d)(1) An employee who is separated from the Federal Government or the government of the District of Columbia to accompany a civilian or uniformed sponsor on official assignment to an overseas area is entitled to a recredit of sick leave within the time limit provided by paragraph (b) of this section or within no more than 2 years after he or she returns to the United States from an overseas area to which the sponsor was assigned, whichever is later, provided the individual—

(i) Was a family member of a Federal civilian employee or a member of a uniformed service who was assigned to an overseas area; and

(ii) Accompanied the civilian employee or uniformed sponsor on official assignment in the overseas area

during the 3-year period specified in paragraph (b) of this section.

* * * * *

[FR Doc. 89-20332 Filed 8-28-89; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV-AO-88-3; FV-88-108]

RIN 0581-AA29

Vidalia Onions Grown in Georgia; Final Decision and Referendum Order on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes the issuance of a marketing agreement and order for Vidalia onions. A marketing agreement and order are currently in effect on an interim basis. For the purposes of this document, the term "Vidalia onions" refers to onions grown in the designated production area, which consists of thirteen counties and portions of six other counties in southeastern Georgia. The interim order authorizes production and marketing research and promotion projects, including paid advertising, for Vidalia onions. The program is administered by a nine member industry committee consisting of eight growers, of whom at least four must also be handlers, and a public member. The program is financed by assessments levied on Vidalia onions. The program is administered by a nine member industry committee consisting of eight growers, of whom at least four must also be handlers, and a public member. The program is financed by assessments levied on Vidalia onion handlers. A primary objective of the program is to improve grower returns by strengthening consumer demand through various promotion activities and by reducing costs through production and marketing research. Vidalia onion producers will vote in a referendum to determine whether they favor issuance of the marketing order regulating the handling of Vidalia Onions grown in Georgia.

DATES: The referendum shall be conducted from September 13-15, 1989. The representative period for the purposes of the referendum herein ordered in July 31, 1988, to August 1, 1989.

FOR FURTHER INFORMATION CONTACT: John R. Toth or William G. Pimental, Fruit and Vegetable Division, USDA, AMS, P.O. Box 2276, Winter Haven, Florida 33883, telephone 813-229-4770; or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, D.C. 20090-6456, telephone 202-447-5331.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued August 19, 1988, and published in the **Federal Register** on August 23, 1988 (53 FR 32054); Tentative Decision and Referendum Order and Opportunity to File Written Exceptions—Issued February 21, 1989, and published in the **Federal Register** on February 24, 1989 (54 FR 8160); Interim Order—Issued March 10, 1989, and published in the **Federal Register** on March 16, 1989 (54 FR 10972).

Preliminary Statement

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

This decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The tentative marketing agreement and interim order were formulated on the record of a public hearing held at the Toombs County Courthouse in Lyons, Georgia, on September 20-21, 1988. Notice of the hearing was published in the August 23, 1988, issue of the **Federal Register.** The notice set forth a proposed order submitted by a group of Vidalia onion producers and handlers known as FAVOR (Farmers Allied for the Vidalia Onion Referendum). The principal feature of the proposal was the authority to collect assessments from handlers of Vidalia onions grown in a designated part of Georgia to fund research and promotion activities.

Upon the basis of evidence introduced at the hearing and the record thereof, the Deputy Assistant Secretary for Marketing and Inspection Services on February 21, 1989, filed with the Hearing Clerk, U.S. Department of Agriculture, a Tentative Decision and Referendum Order, directing that a referendum be conducted during the period March 1-3, 1989, among producers of Vidalia onions to determine whether they favored issuance of the proposed interim marketing order. In the referendum, the marketing order was favored by more than two-thirds of the producers voting in the referendum and also by producers of more than two-thirds of the production represented in the referendum. The tentative marketing agreement was signed by handlers who, during the representative period, handled not less than 50 percent of the volume of Vidalia onions covered by the interim order. The tentative marketing agreement and interim marketing order were issued on March 10, 1989, and became effective upon publication in the **Federal Register** on March 16, 1989.

The Tentative Decision and Referendum Order also provided interested persons the opportunity to file written exceptions thereto by June 30, 1989. Four exceptions were received. Exceptions were filed by Congressman Lindsay Thomas, on behalf of a group of Vidalia onion producers; Mr. Frank M Grasberger, on behalf of the Farmers Allied for the Vidalia Onion Referendum (FAVOR); Mr. Terence J. Center, Associate Professor, College of Agriculture, University of Georgia; and T.M. "Mort" Ewing, President of the Georgia Farm Bureau Federation. These exceptions to the Tentative Decision are discussed and ruled upon in this document.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $500,000. Small agricultural service firms, which would include handlers under this proposed order, are defined as those with gross annual revenues of less than $3.5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Act requires the application of uniform rules to regulated handlers. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are normally brought about through group action of essentially small entities acting on their own behalf. This, both the RFA and the Act have small entity orientation and compatibility.

There are approximately 160 handlers of Vidalia onions. During the 1987 season, commercial shipments totalled about 738,400 50-pound bags at an average f.o.b. price of $16.75 for a total value of about $12.4 million. An undetermined volume was also sold locally at roadside stands and through mail order operations. While there is a great variance in size of individual handler operations, almost all the handlers that would be regulated under this proposed order would qualify as small firms under the SBA's definition.

There are about 260 Vidalia onion growers in Georgia. The average acreage of onions grown is 27 acres, with the smallest farm being one-tenth of an acre and the largest farm having 600 acres of Vidalia onions. About 5 percent of the growers farm in excess of 100 acres, and almost 30 percent have less than 5 acres. The majority of these growers could be classified as small businesses.

Because most of the growers and handlers of Vidalia onions are small in size, they have been unable to individually finance the types of research and promotion efforts needed by the industry. The marketing order program provides a means for these small entities to pool their resources and work together to solve their common problems. Such action is necessary for this relatively small industry to remain profitable in the face of intense competition from larger industries.

The marketing order authorizes the collection of assessments from handlers of Vidalia onions grown in a designated part of Georgia. Assessment funds can be used to finance production research projects that could reduce costs by improving post-harvest handling techniques and reducing the occurrence of onion diseases. Assessment funds can also be used to strengthen demand and expand markets for Vidalia onions through marketing research and product promotion programs, including paid advertising. The order is administered by a committee composed of Vidalia onion producers and a public member nominated by growers and selected by the Secretary. Daily administration of the order is carried out by a staff hired by the Vidalia Onion Committee (committee). The order does not regulate the production of Vidalia onions and places no restrictions on the quality or quantity of Vidalia onions that may be handled.

The principal requirement of the order which affects handlers is the requirement that they pay assessments on fresh market shipments of Vidalia onions to fund research and promotion programs. Any assessment rate that may be established would be recommended by the committee to the Secretary for approval.

Acreage and supplies of Vidalia onions have risen dramatically in recent years, and the marketing order provides a means of halting the drop in grower returns experienced in past seasons. This could be achieved by strengthening demand and developing new markets for these increasing supplies through promotion of Vidalia onion. Also, costs could be reduced through research. Thus, the marketing order could be expected to have a positive impact on grower returns.

The order also imposes some reporting and recordkeeping requirements on handlers. The burden that is imposed with respect to these requirements is negligible. Most of the information that is reported to the committee is already compiled by handlers for other uses and is readily available. In compliance with the Office of Management and Budget (OMB) regulations (15 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of that Act, the information collection and recordkeeping requirements that are imposed by the interim final rule have been approved by the OMB and assigned OMB No. 0581–0160. The provisions contained in the interim final rule are the same as those proposed in this final decision. The currently approved requirements impose an estimated annual reporting burden of approximately one hour on each of the 160 handlers covered by the order and an estimated recordkeeping burden of about 15 minutes. Any additional reporting requirements that may be imposed under the order would not become effective prior to the OMB review. Such requirements would be evaluated against the potential benefits to be derived, and any added burden resulting from increased reporting would not be significant when compared to those anticipated benefits.

The Act requires that prior to the issuance of a marketing order, a referendum be conducted of affected producers to determine whether they favor issuance of th order. The ballot material that will be used in conducting the referendum has also been submitted to and approved by the OMB. It has been estimated that it will take an average of 10 minutes for each of the approximately 260 Vidalia onion growers to participate in the voluntary referendum balloting. Additionally, it has been estimated that it will take approximately five minutes for each of the 160 handlers to complete the marketing agreement.

In determining that the order would not have a significant economic impact on a substantial number of small entities, all of the issued discussed above were considered. The marketing order provisions have been carefully reviewed and every effort has been made to eliminate any unnecessary costs or requirements. Although the order may impose some additional costs and requirements on handlers, it is anticipated that the order would help strengthen demand for Vidalia onions grown in Georgia. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefiting handlers and producers alike. Accordingly, it is determined that the marketing order would not have a significant impact on small handlers or producers.

In accordance with Executive Order 12612, consideration has been given as to whether the marketing order has substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. To this end, notice of the hearing conducted to consider the establishment of a Federal marketing order program for Vidalia onions grown in Georgia was provided to the Governor of Georgia as well as to the State's Commissioner of Agriculture. One State official provided testimony at the hearing that concluded that the proposed Federal program would not conflict with any State statute, would not interfere with any State function, and would impose no burden on the State of Georgia, either financial or otherwise. It is therefore determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Findings and Conclusions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Tentative Decision set forth in the February 24, 1989, issue of the **Federal Register** (54 FR 8160), are hereby reaffirmed and adopted in this Decision subject to the following modifications to the findings and conclusions.

The findings and conclusions in material issue 3 of the Tentative Decision concerning the definition of the term "Vidalia onion" are amended by adding the following two paragraphs after the ninth paragraph of material issue 3 to read as follows:

Exceptions were filed by Mr. Frank M. Grasberger, Mr. Terence J. Centner, and T. M. "Mort" Ewing relating to the definition of the term "Vidalia onion". Each took exception to the use of other terms, such as "Georgia Vidalia Onions" and "Vidalia onions grown in Georgia" as being inconsistent with the term defined in the interim marketing order. Mr. Grasberger stated that, since § 955.5 of the interim marketing order defines "Vidalia onion" to mean only yellow granex onions and similar varieties that are grown in the designated production area in Georgia, the use of such terms as "Georgia Vidalia onion" is redundant. The exceptions further pointed out that these terms are misleading in that they imply that Vidalia onions can be grown in States other than Georgia, and that persons outside the production area could market their onions as Vidalia onions. The commentors contend that, on the contrary, "Vidalia onion" is recognized as a term that applies exclusively to onions grown in Southeastern Georgia. To support this contention, the commentors pointed to record evidence that shows the term "Vidalia onion" is a term recognized in the trade and therefore needs no further qualification as to the State of origin. Mr. Centner used as evidence to support his claim a letter from the National Onion Association which indicated that Vidalia onions refer only to onions grown in the Vidalia district of Georgia. Each exception recommended that all references to "Georgia Vidalia onions" or "Vidalia onions grown in Georgia" in the Tentative Decision be revised to read "Vidalia onions".

The Act provides that a marketing order be applicable to a defined commodity grown in a specified geographic area. References in the Tentative Decision to "Vidalia onions grown in Georgia" or "Georgia Vidalia onions" were intended to make it clear that the proposed marketing order would be limited in its applicability to a specified production area in the State of Georgia. These references are therefore appropriate for purposes of the proposed marketing order. Therefore, the exceptions with respect to material issue 3 are denied.

Based on the exceptions filed by Mr. Grasberger and Congressman Lindsay Thomas, the findings and conclusions of material issue 5(f) of the Tentative Decision concerning compliance are hereby amended by adding the following four paragraphs after the fourth paragraph of material issue 5(f) to read as follows:

Mr. Grasberger took exception to the lack of a provision in § 955.80 of the proposed order (Compliance), that no person located either inside or outside the production area may apply the term "Vidalia onion" or any other term using the word "Vidalia" to any container of onions unless the product meets the definition of Vidalia onions set forth in the marketing order. Mr. Grasberger contended that such provision is necessary to achieve the objectives of the marketing order program. He argued that limiting the use of "Vidalia onions" to those onions grown in the production area would contribute to the effectiveness of research and promotion activities conducted under the order, and would provide the trade and consumers with confidence that the onions they are purchasing as Vidalia onions are, in fact, Vidalias as defined in the order. Further, Mr. Grasberger stated that restricting the use of the term "Vidalia onion" under the marketing order would not constitute regulating the handling of, or prescribing labelling requirements for, onions produced outside the production area.

A similar exception was filed by Congressman Lindsay Thomas on behalf of a group of Vidalia onion producers. That exception contended that consumers are being deceived when they purchase onions labeled "Vidalia", and those onions are not the same as the true Vidalia onions grown in Georgia. The exception stated that section 11(c) of the Act, "Regional Application", provides the Secretary with the discretion to restrict the use of a term under a marketing order for the purpose of distinguishing a product grown in one area from similar products grown elsewhere to give due recognition to regional differences in production. The exception urged the use of such discretion to stop the widespread abuse of the term "Vidalia onion".

The interim marketing order was promulgated to provide authority for research and promotion programs funded by handler assessments. Proponents believed that a marketing order with such authority could improve grower returns by strengthening consumer demand for Vidalia onions. There is no authority in the Act to preclude the use of the term "Vidalia onions" by persons handling onions grown outside the area covered by the marketing order. The Tentative Decision concluded that the proponents' proposal to prevent the labelling of onions grown outside the production area as Vidalias was not consistent with the authority in the act and was therefore not included in the proposed order.

Section 11(c) of the Act states that "All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas." Section 11(c) does not provide the Secretary with the authority to specify the conditions under which onions not subject to regulation under a marketing order may be handled. For these reasons, the two exceptions filed with respect to material issue 5(f) are denied.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Tentative Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are denied for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents entitled, respectively, "Order Regulating the Handling of Vidalia Onions Grown in Georgia" and "Marketing Agreement Regulating the Handling of Vidalia Onions Grown in Georgia." These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, that this entire decision be published in the **Federal Register**. The provisions of the marketing agreement are identical to those contained in the order as hereby proposed by the annexed order which is published with this decision.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 et seq.) to determine whether the issuance of the annexed order regulating the handling of Vidalia onions grown in Georgia is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of Vidalia onions in the aforesaid production area.

The representative period for the conduct of such referendum is hereby determined to be July 31, 1988 to August 1, 1989.

The agents of the Secretary to conduct such referendum are hereby designated to be John R. Toth, Fruit and Vegetable Division, USDA, AMS, P.O. Box 2276, Winter Haven, Florida 33883, telephone 813–299–4770; and Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, USDA, AMS, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

List of Subjects in 7 CFR Part 955

Georgia, Marketing agreements and orders, Vidalia onions.

Dated: August 24, 1989.

John Frydenlund,

Acting Assistant Secretary, Marketing and Inspection Services.

Order Regulating the Handling of Vidalia Onions Grown in Georgia [1]

Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon a proposed marketing agreement and order regulating the handling of Vidalia onions grown in Georgia.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order regulate the handling of Vidalia onions grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of Vidalia onions produced in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of Vidalia onions grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of Vidalia onions grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said marketing agreement and order, as follows:

The provisions of the tentative marketing agreement and interim order as contained in the tentative decision issued by the Deputy Assistant Secretary for Marketing and Inspection Services on February 21, 1989 and published in the **Federal Register** on February 24, 1989 (54 FR 8160), shall be and are the terms and provisions of this order and are set forth in full herein. Those sections identified with an asterisk (*) apply only to the marketing agreement and not to the marketing order.

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

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Marketing Agreement

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Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Definitions

§ 955.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department of Agriculture who has been delegated, or who may hereafter be delegated, the authority to act for the Secretary.

§ 955.2 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 955.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 955.4 Production area.

Production area means that part of the State of Georgia enclosed by the following boundaries: Beginning at a point in Laurens County where U.S. Highway 441 intersects Highway 16; thence continue southerly along U.S. Highway 441 to a point where it intersects the southern boundary of Laurens County; thence southwesterly along the border of Laurens County to a point where it intersects the county road known as Jay Bird Springs Road; thence southeasterly along Jay Bird Springs Road to a point where it intersects U.S. Highway 23; thence easterly to a point where U.S. Highway 23 intersects the western border of Telfair County; thence southwesterly following the western and southern border of Telfair County to a point where it intersects with Jeff Davis County; thence following the southern border of Jeff Davis County to a point where it intersects with the western

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

border of Bacon County; thence southerly and easterly along the border of Bacon County to a point where it intersects Georgia State Road 32; thence easterly along Georgia State Road 32 to Seaboard Coastline Railroad; thence northeasterly along the tracks of Seaboard Coastline Railroad to a point where they intersect Long County and Liberty County; thence northwesterly and northerly along the southwestern border of Liberty County to a point where the border of Liberty County intersects the southern border of Evans County; thence northeasterly along the eastern border of Evans County to the intersection of the Bulloch County border; thence northeasterly along the Bulloch County border to a point where it intersects with the Ogeechee River; thence northerly along the main channel of the Ogeechee River to a point where it intersects with the southeastern border of Screven County; thence northeasterly along the southeasterly border of Screven County to the main channel of the Savannah River; thence northerly along the main channel of the Savannah River to a point where the northwestern boundary of Hampton County, South Carolina intersects the Savannah River; thence due west to a point where State Road 24 intersects Brannen Bridge Road; thence westerly along Brannen Bridge Road to a point where it intersects with State Road 21; thence westerly along State Road 21 to the intersection of State Road 17; thence westerly along State Road 17 to the intersection of State Road 56 and southerly to the northern border of Emanuel County; thence westerly and southerly along the border of Emanuel County to a point where it intersects the Treutlen County border; thence southerly to a point where the Truetlen County border intersects Interstate Highway 16; thence westerly to the point of beginning in Laurens County.

§ 955.5 Vidalia onion.

Vidalia onion means all varieties of Allium cepa of the hybrid yellow granex, granex parentage or any other similar variety recommended by the committee and approved by the Secretary, that are grown in the production area.

§ 955.6 Handler.

Handler is synonymous with "shipper" and means any person (except a common or contract carrier of Vidalia onions owned by another person) who handles Vidalia onions, or causes Vidalia onions to be handled.

§ 955.7 Handle.

Handle or *ship* means to package, load, sell, transport, or in any other way to place Vidalia onions, or cause Vidalia onions to be placed, in the current of commerce within the production area or between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery of field-run Vidalia onions to a person within the production area for the purpose of having such Vidalia onions prepared for market.

§ 955.9 Producer.

Producer is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of Vidalia onions for market.

§ 955.10 Producer-Handler.

Producer-Handler means a producer who handles Vidalia onions.

§ 955.12 Committee.

Committee means the Vidalia Onion Committee, established pursuant to § 955.20.

§ 955.13 Fiscal period.

Fiscal period means the 12-month period beginning on September 16 and ending on September 15 of the next year or such other period that may be recommended by the committee and approved by the Secretary.

Committee

§ 955.20 Establishment and membership.

(a) There is hereby established a Vidalia Onion Committee, consisting of nine members, to administer the terms and provisions of this part. Eight members shall be producers, and one shall be a public member. At least four of the producer members shall be producer-handlers. Each member shall have an alternate who shall have the same qualifications as the member.

(b) Each member, other than the public member, shall be an individual who is, prior to selection and during such member's term of office, a resident of the production area and a grower or an officer or employee of a grower.

(c) The public member shall be a resident of the production area and shall have no direct financial interest in the commercial production, financing, buying, packing or marketing of Vidalia onions, except as a consumer, nor shall such person be a director, officer or employee of any firm so engaged.

§ 955.21 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for two years and shall begin as of September 16 or for such other period as the committee may recommend and the Secretary approve. The terms shall be determined so that approximately one-half of the total committee membership shall terminate each year. Members and alternates shall serve in such capacity during the term of office or portion thereof for which they are selected and until their respective successors are selected.

(b) The term of office of the initial members and alternates shall begin as soon as possible after the effective date of this part. As determined by lot drawn at the initial nomination meeting, one-fourth of the initial grower members and alternates shall serve for a one-year term, one-fourth shall serve for a two-year term, one-fourth shall serve for a three-year term, and one-fourth shall serve for a four-year term. The term of office for the initial public member and alternate shall be for two years.

(c) The consecutive terms of office of members shall be limited to three 2-year terms.

§ 955.22 Nominations.

(a) Initial members. For nominations to the initial committee, a meeting of producers shall be held by the Secretary.

(b) Successor members. (1) The committee shall hold or cause to be held not later than August 1 of each year, or such other date as may be specified by the Secretary, a meeting or meetings of growers for the purpose of designating one nominee for each position as member and for each position as alternate member of the committee which is vacant, or which is about to become vacant.

(2) Nominations for members and alternates shall be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than August 15 of each year, or by such other date as may be specified by the Secretary.

(3) The Secretary may, upon recommendation of the committee, divide the production area into districts for the purpose of nominating committee members and their alternates.

(c) Only producers may participate in designating nominees to serve as committee members. Each producer is entitled to cast only one vote on behalf of such producer and such producer's agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote shall be construed to

permit a voter to cast one vote for each position to be filled.

(d) The producer members shall nominate the public member and alternate member at the first meeting following the selection of members for a new term of office. Nominations for the public member and alternate member shall be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than November 1, or such other date as may be specified by the Secretary.

§ 955.23 Selection.

From the nominations made pursuant to § 955.22 or from other qualified persons, the Secretary shall select members and alternate members of the committee.

§ 955.24 Acceptance.

Any person nominated to serve as a member or alternate member of the committee shall, prior to selection by the Secretary, qualify by filing a written acceptance indicating such person's willingness to serve in the position for which nominated.

§ 955.25 Alternates.

An alternate member of the committee shall act in the place and stead of the member for whom such person is an alternate during such member's absence or when designated to do so by such member. In the event both a member of the committee and that member's alternate are unable to attend a committee meeting, the member, the alternate, or the committee, in that order, may designate another alternate from the same district (if applicable) and the same group (producer or producer-handler) to serve in such member's stead. Only the public member's alternate is authorized to serve in the place and stead of the public member. In the event of the death, removal, resignation or disqualification of a member, that member's alternate shall serve until a successor to such member is selected.

§ 955.26 Vacancies.

To fill any vacancy occasioned by the failure of any person nominated as a member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of a member or alternate, a successor for the unexpired term may be selected by the Secretary from nominations made pursuant to § 955.22, or from other eligible persons.

§ 955.27 Failure to nominate.

If nominations are not made within the time and manner prescribed in § 955.22, the Secretary may, without regard to nominations, select members and alternates on the basis of the representation provided for in § 955.20.

§ 955.28 Procedure.

(a) Five members of the committee shall constitute a quorum, and five concurring votes shall be required to pass on any motion or approve any committee action.

(b) The committee may provide for meetings by telephone, telegraph, or other means of communication, and any vote cast orally at such meetings shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

§ 955.29 Expenses.

Members and alternates shall serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under this part.

§ 955.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 955.31 Duties.

The committee shall have, among others, the following duties:

(a) As soon as practicable after the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members or alternates, and to adopt such rules and regulations for the conduct of its business as it deems necessary;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as may be requested;

(d) To appoint such employees, agents, and representatives as it may deem necessary, to determine the compensation and define the duties of each person, and to protect the handling of committee funds;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to Vidalia onions;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee. Such minutes, books, and records shall be subject to examination at any time by the Secretary or the Secretary's authorized agent or representative. Minutes of each committee meeting shall be furnished promptly to the Secretary;

(g) Prior to the beginning of each fiscal period, to prepare and submit to the Secretary a budget of its projected income and expenses for such fiscal period, together with a report thereon and a recommendation as to the rate of assessment for such period;

(h) To cause its books to be audited by a Certified Public Accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. A copy of each report shall be furnished to the Secretary. A copy shall also be made available at the principal office of the committee for inspection by producers and handlers provided that confidential information shall be removed;

(i) To give the Secretary the same notice of meetings of the committee and its subcommittees as is given to its members.

Expenses and Assessments

§ 955.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by the committee for its maintenance and functioning, and enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in §§ 955.42 and 955.45.

§ 955.41 Budget.

At least 60 days prior to each fiscal period, or such date as may be specified by the Secretary, and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 955.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each person who first handles Vidalia onions shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations or other available information.

(c) At any time during, or subsequent to, a given fiscal period that committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the assessment rate. Such increase shall be applicable to all Vidalia onions which were handled during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions of this part are suspended or become inoperative.

(e) To provide funds for the administration of the provisions of this part during the initial fiscal period or the first part of a fiscal period when neither sufficient operating reserve funds nor sufficient revenue from assessments on the current season's shipments are available, the committee may accept payment of assessments in advance or may borrow money for such purposes.

(f) The committee may impose a late payment charge or an interest charge or both, on any handler who fails to pay any assessment in a timely manner. Such time and the rates shall be recommended by the committee and approved by the Secretary.

§ 955.43 Accounting.

(a) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member or alternate of the committee, such person shall account for all receipts and disbursements and deliver all property and funds in such member's possession to the committee, pertaining to the committee's activities for which such person was responsible, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds or any other committee property during periods of suspension of this part, or during any period or periods when regulations are not in effect and, upon determining such action is appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for the committee.

§ 955.44 Excess funds.

If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(a) The committee, with approval of the Secretary, may establish an operating reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established, except funds in the reserve shall not exceed the equivalent of approximately three fiscal periods' budgeted expenses. Such reserve funds may be used:

(1) To defray any expenses authorized under this part;

(2) To defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses;

(3) To cover deficits incurred during any fiscal period when assessment income is less than expenses;

(4) To defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and

(5) To cover necessary expenses of liquidation in the event of termination of this part.

Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate except that to the extent practicable, such funds shall be returned pro rata to the persons from whom funds were collected.

(b) If such excess is not retained in a reserve as provided in paragraph (a) of this section, each handler entitled to a proportionate refund of the excess assessments collected shall be credited at the end of a fiscal period with such refund against the operations of the following fiscal period unless such handler demands payment thereof, in which event such proportionate refund shall be paid.

§ 955.45 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 955.50. Such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use.

Research and Development

§ 955.50 Research and development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development and marketing promotion projects, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of Vidalia onions. Any such project for the promotion and advertising of Vidalia onions may utilize an identifying mark which shall be made available for use by all handlers in accordance with such terms and conditions as the committee, with the approval of the Secretary, may prescribe. The expense of such projects shall be paid from funds collected pursuant to § 955.42 or § 955.45.

(b) In recommending projects pursuant to this section, the committee shall give consideration to the following:

(1) The expected supply of Vidalia onions in relation to market requirements;

(2) The supply situation among competing areas and commodities;

(3) The anticipated benefits from such projects in relation to their costs;

(4) The need for marketing research with respect to any market development activity; and

(5) Other relevant factors.

(c) If the committee should conclude that a program of research and development should be undertaken, or continued, in any fiscal period, it shall submit the following for the approval of the Secretary:

(1) Its recommendations as to the funds to be obtained pursuant to § 955.42 or § 955.45;

(2) Its recommendations as to any research projects; and

(3) Its recommendations as to promotion activity and paid advertising.

(d) Upon conclusion of each activity, but at least annually, the committee shall summarize and report the results of such activity to the Secretary.

(e) All marketing promotion activity engaged in by the committee, including

paid advertising, shall be subject to the following terms and conditions:

(1) No marketing promotion, including paid advertising, shall refer to any private brand, private trademark or private trade name;

(2) No promotion or advertising shall disparage the quality, use, value or sale of like or any other agricultural commodity or product, and no false or unwarranted claims shall be made in connection with the product; and

(3) No promotion or advertising shall be undertaken without reason to believe that returns to producers will be improved by such activity.

Reports and Recordkeeping

§ 955.60 Reports and recordkeeping.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not limited to, the following:

(1) The quantities of Vidalia onions received by a handler;

(2) The quantities disposed of by the handler;

(3) The date of each such disposition; and

(4) The identification of the carrier transporting such Vidalia onions.

(b) All such reports shall be held under appropriate protective classification and custody by duly appointed employees of the committee, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of an individual handler's identity or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the Vidalia onions received and disposed of by such handler as may be necessary to verify reports submitted to the committee pursuant to this section.

Miscellaneous Provisions

§ 955.71 Termination or suspension.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operations of any or all provisions of this part whenever it is found that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of Vidalia onions: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such Vidalia onions produced for market, but such termination shall be effective only if announced on or before June 15 of the then current fiscal period.

(d) Within six years of the effective date of this part, the Secretary shall conduct a continuance referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 955.72 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as joint trustees, for the purpose of liquidating the affairs of the committee, of all funds and property then in the possession, or under control, of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of said committee and of the trustees, to such person as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in said committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 955.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart;

(b) Release or extinguish any violation of this subpart or of any regulations issued under this subpart; or

(c) Affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 955.80 Compliance.

No handler shall handle Vidalia onions except in conformity with the provisions of this part.

§ 955.81 Right of the Secretary.

The members of the committee (including successors and alternates) and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void except as to acts in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 955.82 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

§ 955.83 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 955.85 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to

exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 955.85 Personal liability.

No member or alternate of the committee or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 955.86 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part, or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 955.87 Amendments.

Amendments to this part may be proposed, from time to time, by the committee or by the Secretary.

Marketing Agreement

***§ 955.90 Counterparts.**

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

***§ 955.91 Additional parties.**

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting part at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

***§ 955.92 Order with marketing agreement.**

Each signatory hereby requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of Vidalia onions in the same manner as is provided for in this agreement.

United States Department of Agriculture

Agricultural Marketing Service

Marketing Agreement Regulating the Handling of Vidalia Onions Grown in Georgia

OMB Approval No: 0581–0160

Expiration Date: 2/29/92

The parties hereto, in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), and in accordance with the applicable rules of practice and procedure effective thereunder (7 CFR part 900) desire to enter into this agreement regulating the handling of Vidalia onions grown in Georgia; and each party hereto agrees that such handling shall, from the effective date of this marketing agreement, be in conformity to, and in compliance with, the provisions of said marketing agreement as hereby enacted.

The provisions of §§ 955.1–955.92, inclusive, of the order annexed to and made a part of the decision of the Secretary of Agriculture with respect to a proposed marketing agreement and order regulating the handling of Vidalia onions grown in Georgia, plus the following additional provisions shall be, and the same hereby are, the terms and conditions hereof; and the specified provisions of said annexed order are hereby incorporated into this marketing agreement as if set forth in full herein:

§ 955.90 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 955.91 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting part at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 955.92 Order with marketing agreement.

Each signatory handler requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of Vidalia onions in the same manner as is provided for in this agreement.

The undersigned hereby authorizes the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, to correct any typographical errors which may have been made in this marketing agreement.

In witness whereof, the contracting parties, acting under the provisions of the Act, for the purpose and subject to the limitations therein contained, and not otherwise, have hereto set their respective signatures and seals.

(Firm Name)_____

By: (Signature)_____ [1]

(Mailing Address)_____

(Title)_____

(Date of Execution)_____

(Corporate Seal; if none, so state)

Public reporting burden for this collection of information is estimated to average five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20503.

This information is required to determine voter eligibility and vote of Vidalia onion handlers. Falsification of information on this government document may result in a fine of not more than $10,000 or imprisonment for not more than five years or both (18 U.S.C. 1001).

(For use by incorporated handlers)

OMB Approval No: 0581–0160

Expiration Date: 2/29/92

Certificate of Resolution

(Corporation only)

At a duly convened meeting of the Board of Directors of _____ held at _____ on the ___ day of _____ 1989, RESOLVED, That _____ shall become a party to the marketing agreement regulating the handling of Vidalia onions grown in Georgia, which was annexed to and made part of the decision of the Secretary of Agriculture, and it is further, RESOLVED, That

_____

(Name)_____

(Title)_____

and

(Name)_____

(Title)_____ be, and the same hereby are, authorized and directed severally or jointly to sign, execute, and deliver counterparts of the said agreement to the Secretary of Agriculture.

I, _____, Secretary of _____ do hereby certify this is a true and correct copy of a resolution adopted at the above named meeting as said resolution appears in the minutes thereof.

(Signature)_____

(Address of Firm)_____

(Corporate Seal; if none, so state)

[FR Doc. 89–20324 Filed 8–28–89; 8:45 am]

BILLING CODE 3410–02–M

[1] If one of the contracting parties to this agreement is a corporation, my signature constitutes certification that I have the power granted to me by the Board of Directors to bind this corporation to the marketing agreement.

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 89-021P]

Imported Product; Withdrawal of Panama from the List of Countries Eligible for the Importation of Meat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to withdraw the country of Panama from the list of countries eligible for importation of their products of cattle, sheep, swine, and goats into the United States under the Federal Meat Inspection Act (FMIA). The FMIA requires that, in order for a country to be eligible to export meat products to the United States, the meat inspection system of the country must assure compliance with requirements that are "at least equal to" the requirements of the FMIA and regulations as applied to official establishments in the United States and their products. FSIS has determined that Panama has not certified that any plant met U.S. standards in 1988, that it has not conducted residue testing and therefore did not receive a residue certification in 1988, and that reliance cannot be placed upon the certifications required of Panamanian authorities under the FMIA. Because of the lack of current information and the failure of Panama to demonstrate its "equal to" status, the Administrator is proposing to withdraw the country of Panama from the list of countries eligible for importation of their meat products into the United States.

DATES: Comments must be received on or before October 30, 1989.

ADDRESS: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION, CONTACT: Dr. Lawrence Skinner, Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6933.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule is issued in conformance with Executive Order 12291, and has been determined not to be a "major rule." It will not result in an annual effect of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. There are currently no domestic importers of Panamanian meat products.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601) because there are currently no domestic importers of Panamanian meat products.

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office and should refer to the docket number located in the heading of this document. All comments submitted in response to this proposal will be made available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Pursuant to the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Secretary of Agriculture is responsible for administering the programs which are designed to ensure that meat and meat food products distributed to consumers are wholesome, not adulterated, and properly marked, labeled, and packaged. The Administrator of FSIS has been delegated the authority to issue regulations and implement appropriate procedures to ensure compliance with the requirements of the FMIA. The regulations addressing imported meat are contained in 9 CFR Part 327. In these regulations, the Administrator has established procedures by which foreign countries desiring to export meat or meat products to the United States may become eligible to do so (9 CFR 327.2(a)(2)(iii)).

The Agriculture and Food Act of 1981 (Farm Bill) amended the FMIA to require that imported meat products meet the same inspection, sanitation, quality, species verification, and residue standards applied to domestically prepared product. The Farm Bill directed the Secretary to enforce its provisions through random inspections of imported product at port of entry for residues and species verification, and requires exporting countries to conduct random sampling and testing of internal organs and fat of carcasses at the point of slaughter in accordance with methods approved by the Secretary.

The Food Security Act of 1985 (Farm Bill, Pub. L. 99-198) amended the FMIA by requiring that each foreign country from which meat is offered for importation into the United States obtain a certification issued by the Secretary stating that the country maintains a program using reliable analytical methods to ensure compliance with the United States standards for residues in such meat, and further provides that no meat articles shall be permitted entry into the United States from a country for which the Secretary has not issued such a certification.

Regulations implementing the 1981 Farm Bill requirements were published in the **Federal Register** on February 10, 1983 (48 FR 6091). All countries eligible to export product to the United States were notified of the 1985 Farm Bill changes by letter dated July 13, 1987.

To continue to export meat to the United States, a country must demonstrate that it maintains, among other things, a residue program that meets United States standards. FSIS collects information to verify that the United States standards are being met. This information includes: Annual residue testing results, the findings of FSIS technical experts from on-site reviews, and results of port-of-entry reinspections. In March 1987, FSIS notified Panama that it had not demonstrated continued proficiency in residue testing and further specified the information that must be provided before initiating any plans to certify product for export to the United States. The response from Panama indicated that no residue testing was done in 1987 and 1988.

Panama did not certify that any plants met United States standards in 1988, and therefore, no on-site reviews of the inspection system in operation were made. On-site reviews of plants are normally confined to those certified to export to the United States. A portion of these reviews is devoted to obtaining information concerning random selection of residue samples at slaughter. In addition, residue testing laboratories are reviewed to determine if analytical methods meet United States standards. Since no plants were certified and no residue testing was

being conducted, FSIS was not able to obtain current information. Therefore Panama did not receive a residue certification for 1988. This means that FSIS will not accept any plant certifications from Panama until it demonstrates that its residue program meets United States standards. Without certified plants, shipments of meat products to the United States cannot legally occur.

Although Panama had no plants certified, three consignments of meat product arrived at the port of New Orleans, Louisiana, in January, April and May, 1989, accompanied by a Panamanian meat inspection certificate stating that the meat was produced in certified plants and met United States standards. None of these consignments was accepted for entry. Following the January consignment, FSIS notified Panama that neither plant nor product certifications would be accepted until United States requirements were met. However, Panamanian officials have continued to certify product.

Section 327.4(a) (9 CFR 327.4(a)) requires that any fresh meat or fresh meat byproducts consigned to the United States from a foreign country be accompanied by a foreign meat inspection certificate (health certificate) certifying that the product therein described was derived from livestock which received ante-mortem and post-mortem veterinary inspections at the time of slaughter in certified plants.

Section 327.2(a)(4) (9 CFR 327.2(a)(4)) states that:

> * * * The listing of any foreign country under this section may be withdrawn whenever it shall be determined by the Administrator that the system of meat inspection maintained by such foreign country does not assure compliance with requirements at least equal to all * * * requirements of the Act and the regulations * * * as applied to official establishments in the United States; or that reliance cannot be placed upon certificates required * * * from authorities of such foreign country; or * * * for lack of current information concerning the system of meat inspection being maintained by such foreign country * * *.

Therefore, the Administrator of FSIS has determined that, in the absence of certified plants, residue testing, and current information about the operation of Panama's meat inspection system, Panama's "equal to" status has not been demonstrated; and, moreover, that reliance cannot be placed upon certificates required under the regulations (9 CFR Part 327) from the authorities of such foreign country.

Therefore, pursuant to § 327.2 of the Federal meat inspection regulations (9 CFR 327.2), FSIS is proposing to withdraw Panama from the list of countries from which cattle, sheep, swine, and goat products may be imported into the United States.

Proposed Rule

Accordingly, § 327.2 of the Federal meat inspection regulations would be amended as set forth below:

List of Subjects in 9 CFR Part 327

Imported products; Meat inspection.

PART 327—IMPORTED PRODUCTS

1. The authority citation for Part 327 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 et seq.

§ 327.2 [Amended]

2. Paragraph (b) of § 327.2 would be amended by removing the following country from the list of countries eligible for importation of products of cattle, sheep, swine, and goats into the United States:

Panama

Done at Washington, DC, on August 7, 1989.

Lester M. Crawford, DVM, PhD.,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-20336 Filed 8-28-89; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASW-21]

Proposed Removal of Transition Area: Brackettville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the transition area located at Brackettville, TX. The May 1, 1989, cancellation of the RNAV RWY 30 standard instrument approach procedures (SIAP) to the Los Medanos Ranch Airport has made this proposed action necessary. The intended effect of this proposal is to return to public use that protected airspace no longer required due to the cancellation of the SIAP serving the Los Medanos Ranch Airport. Coincident with this proposal would be the changing of the status of the Los Medanos Ranch Airport from instrument flight rules (IFR) to visual flight rules (VFR).

DATES: Comments must be received on or before October 20, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 89-ASW-21, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASW-21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM)

by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) to remove the transition area located at Brackettville, TX. The May 1, 1989, cancellation of the RNAV RWY 30 SIAP serving the Los Medanos Ranch Airport has necessitated this proposed action. The intended effect of this proposal is to return to public use that protected airspace no longer required due to the cancellation of the RNAV RWY 30 SIAP. Coincident with this proposal would be the changing of the status of the Los Medanos Ranch Airport fror IFR to VFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "a major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Brackettville, TX [Removed]

Issued in Forth Worth, TX on August 17, 1989.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 89–20269 Filed 8–28–89; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 240, 249, 270, and 274

[Rel. Nos. 34–27148; 35–24942; IC–17112; File No. S7–23–89]

RIN 3235–AB14

Ownership Reports and Trading by Officers, Directors and Principal Security Holders

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: In response to comments received and upon further consideration, the Commission today is reproposing for comment amendments to its rules and forms, as well as related disclosure requirements for issuers, regarding the filing of ownership reports by officers, directors, and principal security holders, and the exemption of certain transactions by those persons from the short-swing profit recovery provisions of the Securities Exchange Act of 1934 and related provisions of the Investment Company Act of 1940 and the Public Utility Holding Company Act of 1935.

DATES: Comments should be received on or before November 1, 1989.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7–23–89. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington DC 20549.

FOR FURTHER INFORMATION CONTACT: Brian J. Lane, Special Counsel, or Brian J. Lynch, Attorney-Adviser, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, (202) 272–2589.

SUPPLEMENTARY INFORMATION: The Commission is republishing for comment proposed amendments to its rules promulgated under Section 16 [1] of the Securities Exchange Act of 1934 ("Exchange Act").[2] Every rule under Section 16 would be amended, deleted, or reorganized except for Rule 16e–1,[3] and several new Section 16 rules would be added. Further, Exchange Act Rule 12h–2 [4] would be deleted and Rule 30f–1 [5] under the Investment Company Act of 1940 ("Investment Company Act") [6] would be amended.

In addition, the Commission is reproposing new Item 405 of Regulation S–K [7] and new Form 5 as well as changes to Schedule 14A [8] and Forms 10–K,[9] 3,[10] 4,[11] and N–SAR.[12] While the rules are being reproposed in their entirety, this release focuses only on changes from the original proposals.[13]

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[1] 15 U.S.C. 78p (1982).
[2] 15 U.S.C. 78a *et seq.* (1982).
[3] 17 CFR 240.16e–1.
[4] 17 CFR 240.12h–2.
[5] 17 CFR 270.30f–1.
[6] 15 U.S.C. 80a–1 *et seq.* (1982).
[7] 17 CFR 229.10–229.802.
[8] 17 CFR 240.14a–101.
[9] 17 CFR 249.310.
[10] 17 CFR 249.103.
[11] 17 CFR 249.104.
[12] 17 CFR 274.101.
[13] Exchange Act Release No. 26333 (December 2, 1988) (53 FR 49997) ("1988 Release"). The comment period concluded on March 13, 1989. The comment letters and a summary of the letters may be inspected and copied at the Commission's Public Reference Room (File No. S7–26–88).

I. Executive Summary

After reviewing the comments received on the initial proposed amendments to the rules promulgated under section 16 of the Exchange Act, the Commission is reproposing for comment the entire regulatory scheme with the following principal revisions:

- The definition of "officer" would be expanded to include specifically the principal financial officer, controller or principal accounting officer, as well as officers of the issuer's parent who perform policymaking functions for the issuer.
- Institutions engaged in holding securities for their clients in the ordinary course of business, eligible to file a Schedule 13G, would not include customer account holdings in determining ten percent beneficial owner status, and customer trust accounts would not be subject to section 16 as a result of the institution's insider status.
- Reporting of option exercises would be accelerated to the next required Form 4 or Form 5.
- Four different exemptions for intra-plan transactions would be added to Rule 16b–3(e) governing employee benefit plans.
- A three calendar day de minimis exemption from proxy disclosure of late filings would be added, but timeliness would be measured by receipt date at the Commission rather than mail date.
- Form 5 would be required from every person subject to section 26, except a person who conducted no transactions during the year that are reportable on Form 5 and has filed all required Forms 3, 4, and 5.
- An exemption from section 16 for insiders of Canadian issuers would be provided.

In addition, the revised proposed rules include other changes, discussed below. Apart from substantive changes, language in numerous revised proposed rules has been amended for purposes of clarity.

The reproposed rules continue to require that an issuer include in its annual proxy statement disclosure concerning delinquent filers. The Commission is particularly disappointed, given the publicity and concerns expressed, that its updated study reflects a continuing pattern of substantially delinquent filings.[14] This reinforces its conclusion that the proposed rules requiring proxy disclosure and the proposed legislation authorizing administrative proceedings including fines is necessary.

II. Background

Section 16 of the Exchange Act was designed both to provide the public with information on securities transactions and holdings of corporate officers, directors, and principal security holders, and to deter those individuals from profiting on short-term trading in the securities of their corporationswhile in possession of material, non-public information. Section 16 applies to every person who is directly or indirectly the beneficial owner of more than ten percent of any class of equity securities that is registered pursuant to section 12 of the Exchange Act ("ten percent holders"),[15] and to every director and officer of an issuer with a class of equity securities so registered. Officers, directors, and ten percent holders are referred to throughout this release as "insiders." [16]

Believing prompt publicity to be a potent weapon in the effort to curb the abuse of inside information, Congress enacted section 16(a),[17] which requires insiders to file public reports with respect to transactions in the equity securities of their corporations. In mandating reporting by insiders, Congress intended not only to discourage abuse of inside information and encourage voluntary maintenance of proper fiduciary standards by those in control of corporations, but also to give public investors information concerning purchases and sales by insiders, which might indicate such insiders' private opinions of the company's prospects.[18]

"For the purpose of preventing the unfair use of information which may have been obtained by [an insider] by reason of his relationship to the issuer," Congress enacted Section 16(b),[19] which provides for the automatic recovery of any profits made by an insider on securities purchased and sold within a six month period. Unlike other provisions applicable to insider trading, such as Sections 10(b), 14(e) and 21A of the Exchange Act,[20] Section 16 is a strict liability provision under which an insider's short-swing profits can be recovered regardless of whether that insider actually was in possession of material, nonpublic information.[21]

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[14] See Section VIII.A, *infra*.

[15] When referring to issuers registered under Section 12, this release includes closed-end investment companies subject to Section 30(f) of the Investment Company Act (15 U.S.C. 80a–29(f) (1982)) and public utility holding companies subject to Section 17 (a) and (b) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79, 79q (a), (b) (1982)).

[16] The insiders of a closed-end investment company also include the adviser, officers and directors of the adviser, and any affiliated person of the adviser. 15 U.S.C. 80a–2(a)(3); (a)(19) (1982).

[17] 15 U.S.C. 78p(a) (1982).

[18] H. Rep. No. 2383, 73d Cong., 2d Sess. 13, 24 (1934).

[19] 15 U.S.C. 78p(b)(1982).

[20] 25 U.S.C. 78j(b), 78n(e)(1982), 78u–1 (Supp. III 1985); *see* Rule 10b–5 (17 CFR 240.10b–5) and Rule 14e–3 (17 CFR 240.14e–3).

[21] Unlike other provisions of the Exchange Act, Section 16(b) is enforced by the issuer or by security holders bringing derivative actions on behalf of the issuer, rather than by the Commission or by security holders directly pursuing claims for damages.

Congress used this "automatic recovery provision [to] cut * * * through the formidable difficulties of proving intent and actual misuse of inside information that serve to hinder the effectiveness of traditional remedies against insider speculation."[22] The Commission was given specific rulemaking authority to exempt transactions as not comprehended within the purpose of the subsection. Traditionally, rules that exempt an insider from Section 16(b) short-swing profit liability have not provided an exemption for an insider from reporting under Section 16(a), while a reporting exemption has carried with it an exemption from Section 16(b).[23]

Section 16(c),[24] subject to a good faith delivery exception, prohibits the sale of any equity security of the issuer if the selling insider either (1) does not own the security, or (2) does not deliver it within 20 days after sale or mail it within five days. Section 16(d) [25] provides an exemption from Sections 16(b) and (c) for over-the-counter marketmaking activity and Section 16(e) [26] provides an exemption from Section 16(a) for specified foreign and domestic arbitrage transactions.

In the 1988 Release,[27] the Commission proposed a comprehensive revision of the rules under Section 16 to provide consistent treatment of insiders' securities transactions. After consideration of the 271 comment letters received in response to the 1988 Release, the Commission is reproposing for comment the entire regulatory scheme with modification of certain rules in response to comments ("revised proposed rules").[28] This release discusses only substantive changes from the proposed rules. Those wishing a more extensive explanation of the proposed rules that remain unchanged should consult the 1988 Release. In addition, much of the language of the rules initially proposed has been further revised for purposes of greater clarity, and the rules have been repositioned and renumbered for ease of reference. Two charts in Section X of this release compare the current and revised proposed rules.

III. Section 16(a) Reporting

A. Who Must Report

1. Officer

Under the amendments reproposed today, the definition of "officer" under Section 16 would be revised.[29] Although retaining the focus on executive duties contained in the initial proposal, the revised proposal would expand the class of officers subject to Section 16.[30] In addition to the executive officers covered in the definition originally proposed, the revised proposed rules would include principal financial officers, controllers or principal accounting officers,[31] and officers of an issuer's parent [32] who perform policy making functions for the issuer.

Of all the issues presented by the proposed rules, this received the most comment. Concern was voiced by a large number of commenters, particularly individuals, regarding potential narrowing of the officer definition. After weighing these concerns, the Commission continues to believe that title alone should not be determinative. Consistent with the statutory purpose, judicial decisions have focused on employees performing important executive duties. Most recently, the United States Court of Appeals for the Second Circuit endorsed this view of Section 16, holding that "it is the duties of an employee * * * rather than his corporate title which determine whether he is an officer subject to the short-swing trading restrictions of § 16(b) of the 1934 Act."[33] As long recognized by the Second Circuit, the term "officer" for Section 16 purposes

includes, *inter alia*, a corporate employee performing important executive duties of such character that he would be likely, in discharging these duties, to obtain confidential information about the company's affairs that would aid him if he engaged in personal market transactions. It is immaterial how his functions are labelled.* * *[34]

To do otherwise would permit those with executive functions to avoid responsibility by foregoing title, and to subject those with officer titles, but no real executive responsibilities, to the draconian liability of Section 16.

Many companies already look to the executive officer definition in determining officer status for Section 16 purposes.[35] The revised proposed rules accommodate both the statutory purpose of Section 16 and the strict liability provisions of Section 16(b), which in the view of many commenters are excessively harsh, particularly in view of legal and regulatory developments since the enactment of Section 16. When the reporting and short-swing liability provisions of Section 16 were enacted, they were the only safeguards against the abuse of inside information. Today, the primary tools for prohibiting and remedying the misuse of inside information are the antifraud insider trading liability provisions under Rules 10b–5, 14e–3, and Section 21A of the Exchange Act.[36] Given the efficacy of these provisions, care should be taken to avoid broad-brush imposition of short-swing liability for transactions in which there is no misuse of inside information. Moreover, the liabilities that Section 16(b) can impose on perfectly legitimate transactions can unduly interfere with an insider's sale of securities necessitated by personal emergency.

2. Transactions While not an Officer or Director

Commenters expressed concern that disclosure of officer or director

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[22] S. Rep. No. 379, 88th Cong., 1st Sess. 9 (1963). It should be noted that Section 16 predated the development of the anti-fraud insider trading provisions of Sections 10(b) and 14(e).

[23] *See* current Rule 16a–10 (17 CFR 240.16a–10) and revised proposed Rule 16a–9.

[24] 15 U.S.C. 78p(c)(1982).

[25] 15 U.S.C. 78p(d)(1982).

[26] 15 U.S.C. 78p(e)(1982).

[27] *See* n.13, *supra*.

[28] As used in this release, the term "proposed rules" refers to the original proposals in the 1988 Release. The term "revised proposed rules" refers to the proposals contained in this release.

[29] The revised proposed rules would alphabetize the definitions for easier reference. The definition of "officer" would be relocated as revised proposed Rule 16a–1(f).

[30] The original proposal would have used the definition of executive officer in Rule 3b–7 (17 CFR 240.3b–7). Rule 3b–7 defines an executive officer as "president, any vice president. . . in charge of a principal business unit, division of (sic) function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant." It also includes officers of a subsidiary that perform policy making functions for the parent issuer.

[31] Principal financial officers and controllers or principal accounting officers also are required to sign an issuer's Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a *et seq.* (1982)) registration statements and annual reports filed on Form 10–K (17 CFR 249.310) under the Exchange Act.

[32] In the 1988 Release, comment was solicited regarding the inclusion of parent company executive officers. Commenters were supportive of this proposal, which would specifically address common corporate arrangements where parent management sets and effectuates policy for an issuer. Executive officers of subsidiaries performing policy making functions for the issuer also are included in the reproposed definition, as in Rule 3b–7 and the original proposal.

[33] *C.R.A. Realty* v. *Crotty*, [1988–1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 94,483 (2d Cir. 1989).

[34] *Colby* v. *Klune*, 178 F.2d 872, 873 (2d Cir. 1949).

[35] In a survey of 279 corporations, approximately 72 percent determined who was an officer for Section 16 purposes by applying the executive officer definition in Rule 3b–7, which currently governs proxy disclosure. *See* Romeo & Dye, *Section 16 Reporting Guide*, at p.46G (1989 Edition); *see also American Society of Corporate Secretaries Survey*, November 1988 (approximately one-third of the 840 corporations surveyed used the executive officer definition).

[36] *See* n.20, *supra*.

transactions before attaining insider status is unnecessarily harsh in that it subjects those persons to liability, even though they may not have known at the time of the transactions that they would become officers or directors in the future. For example, an individual may acquire securities prior to becoming an insider without regard to the potential liabilities for subsequent sales; however, upon becoming an insider, the individual could incur liability from selling securities no matter what the need. Commenters argued, and the Commission is persuaded, that the extension of strict liability to these trades may not be warranted. Therefore, the Commission proposes to revise the proposed rule, so that transactions occurring prior to the date a person becomes an officer or director would not be subject to the reporting and liability provisions of Section 16.[37] Section 16 would continue to apply to transactions by officers and directors that take place within six months before the issuer's registration of a class of equity securities under Section 12 of the Exchange Act.[38] Insiders of private companies should be well aware of plans to register under Section 12 sufficiently in advance to take potential Section 16 responsibilities into account in buying and selling issuer securities.

Comment is solicited, however, as to whether it is preferable to subject all transactions conducted prior to achieving insider status to Section 16 or alternatively to subject pre-insider transactions to Section 16 when the person knows or has reason to know that he or she will become an officer or director. Comment is further solicited on whether an exemption for pre-insider trades should be an exemption from the short-swing profit recovery provisions of Section 16(b), but not from the reporting provisions of Section 16(a).

3. Beneficial Ownership

A large number of commenters requested clarification regarding the operation of the beneficial ownership concepts under the proposed rules. The term "beneficial owner," both as originally proposed and as reproposed, would have two applications: one to determine who is subject to Section 16 and another to determine what holdings and transactions must be reported and subject to short-swing profit recovery. The first application of beneficial owner in the revised proposed rules would be used solely to determine whether a person is a ten percent holder and therefore subject to Section 16.[39] Once the determination has been made that a person is an insider—whether an officer, director, or ten percent holder—the second definition of beneficial ownership, the pecuniary interest test, would be used, both for determining what holdings and transactions are reported under Section 16(a) and what transactions are subject to short-swing profit recovery under Section 16(b).[40]

a. *Determining Who is a Ten Percent Holder.* In determining who is a ten percent holder, the voting or investment control analysis of Section 13(d) of the Exchange Act, and the rules thereunder, would be used, as originally proposed.[41] Application of the revised proposed definition[42] would be straightforward; if a person is deemed a ten percent holder pursuant to Section 13(d), and the rules thereunder, the person would be deemed a ten percent holder under Section 16 and would be required to file a Form 3. Once ten percent holder status is determined, the pecuniary interest analysis would govern the securities holdings and transactions to be reported on Forms 3, 4, and 5.

Many commenters recommended an exception from the ten percent holder determination for customer accounts of institutions engaged in holding securities for their clients in the ordinary course of business, generally defined as those institutions currently eligible to file a Schedule 13G ("13G Institutions").[43] The Commission is persuaded that the rules as reproposed should contain such an exemption. Without an exemption, institutions that administer fiduciary accounts in the ordinary course of business would become subject to Section 16 if they exercised either voting power or investment power over these accounts that, when aggregated, held over ten percent of a Section 12 class of equity securities. Under the rules as initially proposed, both the institution and each individual fiduciary account could become subject to Section 16 reporting and liability.[44]

The revised proposals would exclude from the calculation of beneficial ownership of a 13G Institution those securities held in or for customer accounts in the ordinary course of business where the 13G Institution is a passive investor.[45] If the 13G Institution also held securities of the same class in another capacity, those securities would be counted for purposes of determining ten percent holder status. The proposed revision appears necessary to avoid undue interference with the day-to-day business of banks, brokers, dealers, investment advisers and other specified institutional fiduciaries and custodians. The ordinary course of business and passive investment intent conditions should minimize the potential for the institutions to use the aggregated holdings to exert control and gain access to inside information.

The Commission requests comment on the potential for abuse of the proposed exemption and specifically requests comment as to whether the revised proposed rules should be amended to treat a 13G Institution as an insider if it holds more than te percent of an issuer's equity securities for a single customer or customers that would constitute a "group" under Rule 13d–2.[46] Further, if all accounts of a 13G Institution buy and sell issuer stock in unison it may be appropriate to treat each account as an insider. Comment is accordingly requested whether, as a condition to this exemption, the 13G Institution should be precluded from having one person, or one investment committee, make the investment decisions for each of the fiduciary accounts.

b. *Determining Beneficial Ownership for Reporting and Short-Swing Profit Liability.* Once it has been determined that a person is a ten percent holder, or that a person is otherwise subject to Section 16 as a director or officer, the pecuniary interest definition of beneficial owner determines what securities holdings and transactions must be reported and which

[37] Current Rule 16a–1(d) (17 CFR 240.16a–1(d)); revised proposed Rule 16a–2(a).

[38] 15 U.S.C. 78*l* (1982).

[39] Revised proposed Rule 16a–1(a)(1).

[40] Revised proposed Rule 16a–1(a)(2).

[41] *See* Rule 13d–3 (17 CFR 240.13d–3).

[42] Revised proposed Rule 16a–1(a)(1).

[43] 17 CFR 240.13d–102. 13G Institutions would be defined as institutions currently identified in Rule 13d–1(b)(1) (17 CFR 240.13d–1 (b)(1)): brokers, dealers, banks, insurance companies, investment companies, investment advisers, employee benefit plans, pension or endowment funds, groups where all members are the foregoing types of entities, and parent companies of the foregoing, provided their non-13G subsidiaries hold one percent or less of the securities of the issuer in question. The Commission has proposed rules providing that Schedule 13G be made available to certain passive non-institutional investors. *See* Exchange Act Release No. 26598 (March 6, 1989) (54 FR 10552). Revised proposed Rule 16a–1(a)(1), however, is intended to apply to institutions only; the revised proposed Rule is premised on the potential interference the Rule otherwise would have upon the designated institutions' day-to-day affairs carried out in the ordinary course of business.

[44] Pursuant to proposed Rule 16a–5(a)(2) and revised proposed Rule 16a–8(b), trusts with insider trustees would themselves become insiders. *See* Section III.A.3.d, *infra.*

[45] One of the current conditions to the use of Schedule 13G is that eligible institutions not hold the securities with the purpose or effect of changing or influencing the control of the issuer. Rule 13d–1(b)(1)(i) (17 CFR 240.13d–1(b)(1)(i)). Under the revisions that have been proposed, this would continue to be the case.

[46] 17 CFR 240.13d–2.

transactions are subject to short-swing profit liability.[47] This analysis is wholly independent and separate from the analysis determining ten percent holder status.

Under the definition, as originally proposed and as reproposed, an insider beneficially owns all shares in which the insider holds a direct or indirect pecuniary interest.[48] Indirect pecuniary interest represents the insider's ability to profit from purchases and sales in securities held by family members, or through derivative securities, partnerships, corporations, trusts and "other arrangements."[49] An indirect pecuniary interest arising from "other arrangements" would include, among other things, any formal or informal agreement to share profits from transactions in a particular issuer's securities. For example, this would include parking arrangements [50] and specified interests in fee arrangements.[51]

Once all holdings involving a direct or indirect pecuniary interest have been ascertained, such holdings would be reported on the appropriate Form 3, 4, or 5. Insiders would not report beneficial ownership of securities in which they do not have a pecuniary interest, notwithstanding their authority to vote, acquire, or dispose of the securities.[52] If the right to vote or dispose of the securities, however, is separated from the security, the holder of the right may be deemed the beneficial owner of an equity security.[53]

The proposed rule defined several categories of indirect interests in securities that conveyed beneficial ownership for reporting and short-swing profit purposes. Changes have been made with respect to such provisions as follows.

i. Family Holdings. As initially proposed, the rules would have required automatic attribution of the holdings of the insider's immediate family [54] members residing in the same household. Commenters responding to this proposal objected to the automatic attribution feature, which would not have permitted an insider to rebut the presumption of beneficial ownership, and strongly disfavored the suggested alternative approach, which would have extended the concept of beneficial ownership to non-family members residing in the same household.

In response to commenters' concerns, the proposed treatment of family holdings would be revised to eliminate the mandated attribution feature and return to the current use of a rebuttable presumption.[55] The revised proposed rule [56] would create a rebuttable presumption that an insider is the beneficial owner of securities held by a member of the immediate family sharing the same residence. The Commission has been persuaded by commenters that the alternative approach is not appropriate because the control over non-family members' investments is likely to be limited, resulting in a substantial risk of inadvertent shortswing transactions. Nonetheless, where it can be demonstrated that a non-family member in the same household shares a pecuniary interest with the insider, the securities would be attributable to the insider.

ii. Partnership Holdings. As originally proposed, holdings of a general partnership would be attributed to the general partners.[57] As reproposed, this attribution principle would be extended to general partners of limited partnerships.[58] Commenters addressing the issue of attribution generally recommended attributing to general partners of limited partnerships the partnership's portfolio securities holdings [59] and transactions since (1) the standard of care owed by general partners in both general and limited partnerships is typically the same, (2) general partners of limited partnerships typically have a direct interest in the profits of a limited partnership, and (3) the opportunity for general partners to profit from short-swing speculation is no less in a limited partnership than in a general partnership. Accordingly, the revised proposed rule would attribute portfolio securities held by a limited partnership to its general partners for both reporting and short-swing profit liability purposes.

In addition, the revised proposed rule would specify that the extent of a general partner's pecuniary interest in either the general partnership's or the limited partnership's portfolio securities would be measured by the greater of the partner's proportional interest in (1) partnership profits, including profits attributed to any limited partnership interest and any other interest in profits that arise from the purchase and sale of the partnership's portfolio securities, or (2) the general partnership capital account.[60] This approach should reflect more accurately the general partner's pecuniary interest in the partnership's securities.[61]

Comment is solicited, however, on whether beneficial ownership should be determined solely by a general partner's percentage of profit with respect to transactions in the issuer's securities. Comment is further requested whether the rule should specify the means and timing for determining a general partner's profit interest or capital account. Specifically, should the general partner's profit interest or capital account be determined by the greater of the balance specified in the partnership agreement at the date of the subject transaction or as reported to the Internal Revenue Service prior to the subject transaction?

iii. Fee Arrangements. Several institutional commenters urged an exemption from the pecuniary interest

[47] Revised proposed Rule 16a–1(a)(2).

[48] "Pecuniary interest" would be defined in revised proposed Rule 16a–l[a)(2)(i) to mean the opportunity to profit, directly or indirectly, from a transaction in the subject securities.

[49] Revised proposed Rule 16a–1(a)(2)(ii).

[50] "Parking" is a term used to describe arrangements, generally prohibited, whereby a person seeks to disguise his or her beneficial ownership by having another entity or person claim to be the beneficial owner.

[51] *See* Section III.A.3.b.iii, *infra.*

[52] Accordingly, a ten percent holder with no pecuniary interest in the securities would file a Form 3 stating that the amount of securities in which there was a pecuniary interest was zero. No Form 4 or 5 would be required as to those securities unless the ten percent holder acquired a pecuniary interest.

[53] *C.f.* Section III.A.3.b.iv, *infra.*

[54] "Immediate Family" would be defined in revised proposed Rule 16a–1(e) as any child, stepchild, grandchild, grandparent, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law and all adoptive relationships. The only substantive revision from that originally proposed is the addition of grandparents.

[55] *See* Exchange Act Release No. 18114 (Sept. 24, 1981) [46 FR 48147] ("Release No. 18114") Q.4: "Absent countervailing facts, it is expected that securities held by a spouse, minor children and other relatives who share the same home as the insider will be reported as being beneficially owned by the insider since such relationships ordinarily result in the insider obtaining benefits substantially equivalent to ownership."

[56] Revised proposed Rule 16a–l[a)(2)(ii)(A).

[57] Proposed Rule 16a–1(a)(2)(iii).

[58] Revised proposed Rule 16a–1(a)(2)(ii)(B).

[59] The term "portfolio securities" would be defined in revised proposed Rule 16a–1(a)(2)(iv).

[60] The capital account balance in a partnership generally represents the partner's initial investment in the partnership as adjusted by any future investment, distributions, or partnership allocations.

[61] Thus, under revised proposed Rule 16a–1(a)(2)(ii)(B), if a general partner's capital account represented a one percent interest in the partnership but the partnership agreement provided that the general partner would receive ten percent of the profits of the partnership after the first five years, the general partner would beneficially own one percent of the partnership's securities for the first five years and ten percent of the securities after the fifth year, even if the capital account remained equal to a one percent interest. The initial proposal would have attributed merely the partner's pro rata share of the partnership, without distinguishing between profit allocations or the capital account.

definition for management fees, even if those fees are performance related. In response to these commenters' remarks, the revised proposed rules [62] would provide that management and advisory fees would not represent a pecuniary interest in an issuer's securities where the established fee arrangement is based on the gains generated by a portfolio over a period of one year or more and securities of the issuer do not account for more than ten percent of the portfolio. A large percentage of an investment adviser's fee usually is derived from a percentage of the total assets under management, while a smaller portion of the total fee is earned as a result of the fund's performance relative to the Standard and Poor's 500 or some other relevant benchmark. Section 205 of the Investment Advisers Act of 1940 ("Advisers Act") [63] generally prohibits basing adviser fee arrangements on capital gains or capital appreciation generated in the portfolio.[64] Advisers Act Rule 205–3 [65] allows such a performance fee under specified conditions.[66] Since the customary fee received by an adviser usually is connected with the performance of a portfolio of securities over a period of one year or more,[67] the pecuniary interest in the profit from a single securities trade appears so remote that attribution of beneficial ownership for that trade would be inappropriate except where the securities of the issuer account for a significant portion of the portfolio. However, if an entity is awarded a fee based upon the gains from particular transactions, the fee would create a pecuniary interest in the securities transaction that would be subject to short-swing profit liability.

The Commission solicits comment on whether ten percent of a portfolio represents a sufficient interest that the profit generated from transactions in these securities is no longer remote. Should the percent be larger, such as 20 percent, or smaller, such as five percent, before attribution is appropriate?

iv. Dividends. The proposed treatment of pecuniary interest would be revised to exclude interests solely in dividends.[68] The right to dividends alone generally is too remote from the pecuniary interest derived from the purchase and sale of securities to be considered an interest subject to Section 16. This comports with the view of commenters who unanimously urged the exclusion of an interest in dividends alone from Section 16. However, any interest in dividends separated from a security, which is a separate security or traded as a separate right or security, would not be exempt. These interests, which may be treated as equity securities in their own right, present the same potential for speculative profit as the related equity security.

v. Corporate Holdings. Initially, the Commission did not propose a rule addressing a security holder's indirect pecuniary interest in corporate portfolio holdings in order to permit courts flexibility in applying Section 16 to situations where corporate holdings are involved. Those responding to the request for comment generally agreed with the Commission's position with respect to publicly-held entities, but urged the Commission to provide specific attribution provisions for closely-held corporations. These commenters expressed concern that an insider of a Section 12 issuer who also owned shares in a non-public corporation holding securities of that issuer could risk having a court determine that the insider is responsible for transactions carried out by the non-public corporation, even where the insider is not in control of that corporation and does not participate in investment decisions of the entity.

The revised proposed rules contain a non-exclusive safe harbor from attribution. Under the revised proposal, portfolio securities held by a non-public corporation [69] would not be attributed to an insider security holder of that corporation if the following conditions are met: (1) The person is not a control person of the entity; and (2) the person does not have or share investment or voting power over the corporation's portfolio securities. If the test is met, the corporation's securities would not be attributed to or effectively passed through to the insider equity security holder. The Commission is considering treating specified insurance companies and foreign issuers exempt from Section 12 of the Exchange Act as public companies for purposes of the proposed safe harbor.[70] Comment is solicited on whether this alternative would present an opportunity for abuse.

c. *Disclaiming Beneficial Ownership.* Given the change from mandated to presumed attribution,[71] the revised proposed rules would allow an insider to disclaim beneficial ownership of immediate family holdings. Where, however, beneficial ownership is otherwise mandated by a rule, an insider would not be permitted to disclaim beneficial ownership of equity securities.[72]

d. *Trusts and Trustees* i. Introduction. The revised proposed rules reflect two substantive changes from the original proposals in the trust area.[73] First, the revised proposals would exempt trusts from becoming subject to the provisions of Section 16 as a result of having an insider 13G Institution as a trustee. Second, the revised proposals would limit the exemption for trust remainder holders to those without investment control over the trust. There would be two other minor changes to remote interest provisions, discussed below.

ii. Exemption for 13G Institutions as Trustees. As originally proposed and as reproposed, the insider status of a trustee would be attributed to a trust that is not otherwise an insider because of the substantial potential for the trust to benefit from information obtained by the insider trustee.[74] As discussed

[62] Revised proposed Rule 16a–1(a)(2)(ii)(C).

[63] 15 U.S.C. 80b–5 (1982).

[64] Section 205(b)(2) (15 U.S.C. 806–5(b)(2)(1982)) permits certain performance fees, known as "fulcrum fees," if the fee is pursuant to an advisory contract with a registered investment company or with certain other persons, provided the contract relates to the investment of assets in excess of $1 million. Section 205(b)(3) (15 U.S.C. 806–5(b)(3)(1982)) permits performance fees with respect to business development companies.

[65] 17 CFR 275.205–3.

[66] The conditions that must be met in order for the performance related fee to be permissible are, generally, that the client agreeing to the arrangement must meet certain net worth tests, the arrangement involves an arms-length contract, and that disclosure requirements are met, provided that the compensation is based upon net realized and unrealized gains over a period of at least one year. *Id.*

[67] Compensation is calculated after taking into consideration realized capital losses and unrealized capital depreciation netted against gains and unrealized capital appreciation in securities in the account over a period of one year or more.

[68] Revised proposed Rule 16a–1(a)(2)(ii)(D).

[69] Revised proposed Rule 16a–1(a)(2)(iii) would apply to corporations having no reporting obligations under Sections 13 and 15(d) of the Exchange Act, and to corporations having reporting obligations arising from registration of debt securities only.

[70] Section 12(g)(2)(G) of the Act (15 U.S.C. 78*l*(g)(2)(G) (1982)) and Rule 12g3–2(b) (17 CFR 240.12g3–2(b)) exempt specified insurance companies and foreign issuers from the registration requirements of Section 12(g) of the Act (15 U.S.C. 78*l*(g)(1982)) and the reporting requirements of Section 13 of the Act 15 U.S.C. 78m (1982)).

[71] *See* Section III.A.3.b.i., *supra.*

[72] Revised proposed Rule 16a–1(a)(4). This revised rule would not affect the ability of a person to disclaim beneficial ownership for purposes of Section 13(d) reporting. *See* Rule 13d–4 (17 CFR 240.13d–4).

[73] In addition to these substantive changes, all rules relating to trusts would be moved to revised proposed Rule 16a–8, with two exceptions. The exemption for remote interests would be moved to revised proposed Rule 16a–1(a)(5) and the 12 month exemption for fiduciaries would be moved to revised proposed Rule 16a–2 (d) and (e).

[74] Commenters did not object generally to the extension of an individual trustee's insider status to the trust or to the extension of a trust's insider status to an individual trustee. On the other hand,

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above, under the revised proposals,[75] 13G Institutions would not become ten percent holders as a result of their customer account holdings.

There may be situations, however, where a 13G Institution may otherwise be an insider, for example, where it holds ten percent for its own account. In such a case, under the proposed rules, each individual trust would become subject to Section 16. In response to this concern, the revised proposed rule would provide an exemption for all individual trusts administered by 13G Institutions, in the ordinary course of business, and where the 13G Institution was a passive investor.[76] Thus, just as customer accounts would not subject the 13G trustee to Section 16, neither should the 13G trustee subject customer accounts to Section 16. Comment is solicited as to whether there are opportunities for abuse by 13G Institutions, or reasons to subject trusts administered by 13G Institutions to Section 16.

iii. Remote Interests. The proposed rules would be modified in several respects. First, the revised proposed rules would exempt from the beneficial ownership determination remainder interests in trusts, provided the person with the remainder interest does not exercise and does not have the ability to exercise investment control over the trust.[77] Second, the Commission proposes to delete the current exemption for a business trust with over 25 beneficiaries because these entities operate similarly to a corporation and different treatment appears inappropriate.[78] They would be considered corporations for purposes of these rules. The final revision to the remote interest exemption would be the deletion of the exemption for securities held in pension or retirement plans in favor of a new exemption for on-going acquisitions in such a plan.[79]

B. How and When to Report

1. Option Exercises

Many commenters, particularly individual investors, voiced concern over deferred reporting of option exercises. Many investors stated that option exercises represented important indicia of an insider's private views of a company's prospects. One commenter noted that information concerning a sale of securities received upon the exercise of an option, considered profit taking, is viewed as less indicative of an insider's assessment of a company's prospects than other sales. Thus in order to be useful, transaction disclosure requires information as to whether the insider is profit taking or selling an investment.

The revised proposed rules would require insiders to report option exercises at the time they file their next required report, whether on Form 4 or Form 5.[80] This would permit investors evaluating transactions to make a judgment as to whether the securities sold represent option stock or investment stock. Since insiders otherwise would be required to file the report, there should be no significant burden in adding disclosure of the option exercise.

2. Form 5 Revisions

The revised rules incorporate four changes to the proposed annual statement on Form 5 in response to comment received. First, an insider would not be required to file a Form 5 if the person had reported all required holdings and transactions on Forms 3, 4, and 5, during or prior to the fiscal year for which the form is to be filed, and had no transactions requiring deferred reporting.[81] The issuer would continue to have to disclose all insiders who had not filed a required Form 5, but would be entitled to rely on a written representation from the insider that no Form 5 was required if the issuer retains the representation for at least two years.[82] The issuer would not be responsible, however, for the accuracy of the insiders' assertions.

The second change would involve the timing of the filing of Form 5. Originally, the Commission proposed that the Form 5 be filed within 30 days of the issuer's fiscal year end. Many commenters were concerned that this period was not long enough for insiders to learn their positions in various trusts and benefit plans, while other commenters cautioned against extending the deadline significantly since the issuer would need to receive the Forms 5 in time to comply with the proposed Item 405 proxy disclosure requirement. The revised proposed rules would extend the deadline from 30 days to 45 days.[83]

The third proposed change to Form 5 would be the deletion of the certification of compliance with Section 16(a).

An additional change is being proposed in an attempt to clarify the Form 5 filing requirement. The revised proposed rule would require a Form 5 from any person who was an insider at any time during the year. Comment is requested as to whether the rule should require that a person be an insider for a specified minimum period, such as three months or six months of the year. Further, comment is requested as to whether the Form 5 should be required from a person becoming an insider late in the fiscal year, but not from a person ceasing to be an insider.

3. Date of Filing

As proposed, Forms 3, 4, and 5 would have been deemed timely filed if mailed on the date due at the Commission. While those required to supply the information generally supported the proposal, those using the information did not. In light of the comment received, the Commission would revise the proposal to address both concerns. The revised proposed rules would eliminate the mailing date provision and require the filing of these forms by the date due at the Commission. However, given the concern underlying the initial proposal that mail delays might cause some insiders to be identified in proxy statements as non-complying persons, even where the form had been sent in a timely fashion, the proposed proxy disclosure requirement for late filers would be amended to permit the issuer to omit disclosure from the proxy statement if a form was provided to it within three calendar days of the required filing date.[84]

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most respondents objected to the concept of aggregating bank and professional trust company holdings, ascribing insider status to the trustee if such aggregate holdings exceed ten percent and ascribing insider status to the trusts that have a professional trustee who is deemed to be an insider because he or she administers trusts which, in the aggregate, hold over ten percent.

[75] *See* Section III.A.3.b., *supra*.

[76] Revised proposed Rule 16a–8(b).

[77] Revised proposed Rule 16a–1(a)(5)(i). A person with a remainder interest in a trust has an interest in a trust's securities upon the death of a prior beneficiary or expiration of the trust's term. If the ability to control investment decisions is present, the beneficial ownership interest would not be considered remote and the insider would be required to report his or her pecuniary interest in the remainder.

[78] Current Rule 16a–8(g). Many investment companies are structured as Massachusetts business trusts.

[79] Current Rule 16a–8(g)(3) and revised proposed Rule 16b–3(e)(4). *See* discussion in Section V.C., *infra*.

[80] Revised proposed Rule 16a–4(b). If the next required report is due in less than ten days, the reporting person may defer the option exercise disclosure to the following report; otherwise, for example, an insider might exercise an option on the sixth day of the month and a Form 4 disclosing a trade from the previous month would be due on the tenth, providing the insider with only four days to report the exercise.

[81] Revised proposed Rule 16a–3(f).

[82] Revised proposed Item 405(b) of Regulation S–K. *See* Section VIII.B, *infra*.

[83] Revised proposed Rule 16a–3(f).

[84] Revised proposed Item 405(b) of Regulation S–K. If a form is received by an issuer within three

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IV. Derivative Securities

The rules, both as originally proposed and as reproposed, would deem derivative securities to be the same class of equity securities as the underlying security.[85] Thus, the proposed rules would expand liability for transactions in derivative securities, which would be matched with transactions in the underlying securities to yield possible short-swing profits. This is essential to the efficacy of the Section 16 regulatory scheme. The profit potential with derivative securities is the same as with the underlying security, or even greater because of the leverage opportunities. If derivative securities and underlying securities were not matched for purposes of Section 16(b) short-swing profit liability, there would be a substantial loophole in the Section 16 regulatory scheme that would provide an opportunity for abuse.

From an economic perspective, Section 16 should apply to any position the value of which depends on the value of the issuer's equity. Options, warrants and other derivative securities have this characteristic. Indeed, by purchasing put and call options with the appropriate characteristics an investor can replicate the cash flows that result from holding stock directly.[86]

When an insider exercises an option or converts a convertible security, the insider changes indirect ownership in the underlying securities to direct ownership. The insider realizes no profit at the time of exercise,[87] has not significantly altered the potential for profit, and has acquired no greater percentage of beneficial ownership. Whether an insider pays money to exercise or convert a security does not change the analysis. Economists commenting on the proposed treatment of options agreed with this analysis.[88] Moreover, since there is a reportable purchase of the derivative security at acquisition, the purchase at exercise or conversion generally would be exempt because there should not be two purchases involving the same security subject to Section 16(b) liability.

Put equivalent positions, as defined in the revised proposed rules,[89] would be subject to Section 16, as they provide the same opportunity to profit as call equivalent positions. Insiders knowing of news adverse to the issuer could profit through use of put equivalent positions just as insiders might use call equivalent positions to profit on the basis of positive news.

Commenters generally were supportive of the proposed scheme. As more fully discussed below, in response to various comments, the revised proposals incorporate the following major changes: (1) The definition of a derivative security would be revised to clarify when merger rights are excluded; (2) the definition of derivative securities would be narrowed to exclude a larger class of cash-only derivative securities; (3) the reporting of exempt exercises or conversions of derivative securities would be required on the next report due rather than on an annual basis; (4) the exemption from short-swing profit liability for exercises and conversions would be expanded to include out-of-the-money options where the exercise was necessary to comply with the serial exercise provisions of the Internal Revenue Code; and (5) the profit calculation provision would be revised.

A. Definition of Derivative Security

1. Exchange of Shares in a Merger

The initial proposal defined the term "derivative security," but provided four exclusions: (1) Pledged securities; (2) rights arising in connection with a merger; (3) specified cash only securities; and (4) broad-based index options and futures. Concern was expressed that the language of the second exclusion in the proposed definition was too broad and might be read to exclude all derivative securities in connection with a merger, such as privately negotiated options granted by an issuer or principal shareholder upon execution of a merger agreement (a "lock-up" option). This exclusion, taken from the current rules,[90] is intended to have a narrow scope, applying only to the exchange of securities pursuant to a merger agreement which otherwise might be viewed as the exercise of a "right," and therefore a derivative security.[91] Lock-up options and other similar arrangements, which have an existence independent of a merger agreement and otherwise resemble a call option, are not within the scope of the intended exclusion. As such, the Commission proposes to amend the exclusion by changing the clause "in connection with a merger" to "all security holders pro rata . . . as a result of a merger."[92] Thus, a right excluded from the definition is the right resulting from merger terms offered to all holders of that class of securities pro rata, rather than any right that might arise either in connection with or as a result of a merger.

2. Cash-Only Derivative Securities

The definition of derivative security proposed in the 1988 Release would have excluded only those cash-only derivative securities awarded pursuant to a benefit plan satisfying the requirements of Rule 16b–3.[93] Such securities would not be deemed equity securities. In response to the concerns of commenters, the revised proposed rule also would exclude from the definition of derivative securities cash-only derivative securities that have a fixed date of redemption, at least six months in the future, not subject to the discretion of any party.[94] For example, an issuer may award "phantom stock" to an insider that will be redeemed for cash exactly one year and one day after grant. This would not be deemed a derivative security or an equity security. The opportunity for abuse appears slight since the insider is at market risk for at least six months and has no discretion over the transaction.

B. Reporting of Exercises and Conversions

As discussed above, the revised proposed rules would require exercises of derivative securities to be reported on the next otherwise required report, either Form 4 or Form 5.[95]

C. Short-Swing Profit Liability

1. Acquisitions

Some commenters expressed concern that issuer grants of options would be deemed a purchase for Section 16(b)

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calendar days of the required filing date, the issuer may presume, for purposes of disclosure, that the form was filed timely with the Commission.

[85] This would essentially codify the holding in *Chemical Fund* v. *Xerox Corp.*, 377 F.2d 107 (2d Cir. 1967).

[86] The relationship underlying this duplication is known as the "put-call parity theorem." *See* Brealey and Myers, *Principles of Corporate Finance*, 474–475 (Third Edition). Call equivalent position is defined in revised proposed Rule 16a–1(b).

[87] The profit is realized at the time the underlying security is sold. For example, when an insider exercises a call option with an exercise price of $10 and a market price of $20 for the underlying security, there is no profit received until the insider sells the underlying stock for $20 per share. Alternatively, in the case of a standardized option, the insider could have realized his or her profit by selling the option, rather than exercising it.

[88] *See* Letters from Gregory S. Crespi, Senior Counsel Executive Office of the President's Council of Economic Advisors and H. Nejat Seyhun, Visiting Assistant Professor of Finance University of Chicago.

[89] Revised proposed Rule 16a–1(h).

[90] Current Rule 16a–6(a), Note 3 (17 CFR 240.16a–6(a)). The Note was added originally as a result of concern regarding a proposed change to that rule contained in Exchange Act Release No. 9398 (Nov. 24, 1971) (36 FR 22995).

[91] *See* Release No. 18114 Q.51.

[92] Revised proposed Rule 16a–1(c)(2).

[93] 17 CFR 240.16b–3.

[94] Revised proposed Rule 16a–1(c)(3).

[95] *See* Section III.E.1, *supra*.

purposes, unless issued pursuant to a Rule 16b–3 plan, since the proposed scheme would treat all acquisitions as purchases. They argued that option grants generally are beyond the control of insiders and are received without payment of cash. As such, they concluded that there is little opportunity for abuse, and a general exemption from Section 16(b) short-swing profit liability would be warranted.

Concern also was expressed that the absence of an exemption for issuer grants could create inadvertent short-swing transactions. An insider could sell stock and three months later receive a non-exempt stock option grant. The option grant would be deemed a purchase to be matched with the prior sale and a short-swing transaction would result. In essence, these commenters appear to be urging that the Commission delete all conditions to Rule 16b–3 and provide a blanket exemption for issuer option grants, which generally are awarded for compensatory purposes. The Commission is not prepared to provide such an exemption. Comment is requested, however, as to examples of non-compensatory issuer option grants given without consideration or value.

2. Exercises and Conversions

a. *Out-of-the-Money Securities.* The initial proposal would have exempted exercises of in-the-money and at-the-money derivative securities only.[96] If a derivative security is in-the-money, the value of the derivative security is generally more directly linked with the underlying stock than is the case with an out-of-the-money security. The opportunity for profit is different for out-of-the-money securities since they do not have a dollar-for-dollar direct relationship with the underlying securities.[97] Further, if exercises of out-of-the-money derivative securities were exempt, an insider might decide that qualifying for the exemption from Section 16(b) was more desirable than the ability to purchase the underlying stock at a better price in the open market, since stock acquired upon the exercise could be sold immediately, whereas stock acquired in the open market could not be sold for six months. There would be opportunities for abuse in such situations.

Commenters mentioned several reasons out-of-the-money call options are exercised that might justify an exemption: (1) to increase voting power; (2) to buy a large block of stock without affecting the market price; and (3) to comply with Section 422A of the Internal Revenue Code's [98] requirement to exercise options in the order they were granted ("serial exercise rule"). The third situation does not seem to present a significant opportunity for abuse. Whereas the serial exercise rule has been deleted for incentive stock options awarded after January 1, 1987, previously granted options remain subject to the rule. As such, the revised proposal would exempt exercises of out-of-the-money derivative securities where necessary to satisfy the serial exercise rule of the Internal Revenue Code.[99]

b. *Issuer Option Grants.* A few commenters expressed concern that many option grants would be exempt purchases under proposed Rule 16b–3 covering employee benefit plans. Where both the grant and exercise of a derivative security are exempt purchases, they contend, there will be no short-swing transaction when the insider sells the derivative security or underlying security, unless there is another independent purchase by the insider. Thus, the option could be granted, exercised, and the underlying securities sold, within six months without short-swing profit liability.[100] The Commission anticipated these concerns by proposing a six month holding period for options granted pursuant to a Rule 16b–3 plan.

Several commenters criticized the option holding period requirement, stating that there was no similar requirement for stock awarded under a plan complying with Rule 16b–3. They suggested that the treatment be the same and that the option holding period be deleted. Since the overall proposed scheme treats derivative securities in a manner similar to the underlying stock, consistent treatment appears to be warranted. Therefore, it would seem there should be a holding period for both stock and derivative securities or none at all. The revised proposed rules would require a six month holding period for employee benefit plan grants of either underlying securities or derivative securities.[101]

Comment is solicited as to whether the Commission should instead delete any holding period requirements in proposed Rule 16b–3, but amend the exemption for exercises and conversions to exclude derivative securities acquired pursuant to the Rule 16b–3 exemption from the proposed exemption for exercises and conversions. Comment also is requested as to whether there is a basis for distinguishing between options and stock with respect to the need for the proposed holding period.

c. *Derivative Securities with Fixed Exercise Price.* The exemption of exercises and conversions from Section 16(b) liability [102] would be reproposed with one language change. The revised proposed rule would make clear the Commission's intent to exempt exercises of only those derivative securities with fixed exercise or strike prices. Thus, the exercise of an option that by its terms has an exercise price of 90 percent of the market value on the date of exercise would not be exempt. Such an option would be considered to have a "floating" exercise price, warranting special treatment.

The foundation of the proposed scheme for derivative securities is that a person acquires an economic interest in the underlying security at the time the derivative security is acquired. The holder of a derivative security with a floating exercise price has limited economic interest and bears limited risk in a price fluctuation in the underlying security.[103] Therefore, holders of such securities would not be deemed to have purchased the underlying securities until the date of exercise.

3. Dispositions

a. *Determination of Profit.* The Commission proposed two alternative methods for determining the profit from transactions involving derivative securities. As a result of the comments, the Commission proposes to use a profit calculation based on an assumption that the insider purchased and sold the same security, but delete consideration of

[96] When the exercise price for a derivative security is less than the current market price of the underlying security, the derivative security is "in-the-money." If the exercise price and market price are the same, the derivative security is "at-the-money." If the exercise price is greater than the market price, the derivative security is "out-of-the-money."

[97] Factors such as interest rates and volatility of the underlying stock may affect the increase in value of the underlying stock and may also affect the increase in value of the option, but in-the-money options generally closely follow the price movements of the underlying stock. *See generally* J. Cox, S. Ross, & M. Rubinstein, "Option Pricing: A Simplified Approach," *Journal of Financial Economics*, 229–263 (Sept. 1979); M. Brennan & E. Schwartz, "The Valuation of American Put Options," *Journal of Finance*, 449–462 (May 1977).

[98] I.R.C. 422A (26 U.S.C. 422A (1982)).

[99] Revised proposed Rule 16b–6(b).

[100] Current Rule 16b–3 does not contain a holding period that would prevent insiders from acquiring stock and selling it immediately.

[101] Revised proposed Rule 16b–3(c)(1)(ii).

[102] Revised proposed Rule 16b–6(b).

[103] *Cf.* n.86, *supra.*

factors such as interest rates and volatility of the underlying equity security. Such factors, although used by professional options traders in valuing standardized options, are likely to unduly confuse and complicate what otherwise should be a routine application. The revised proposed rule [104] would provide courts a choice between using the change in value of the underlying security or the change in value of one of the derivative securities involved in the transaction. The recovery, however, could not exceed the change in value of the underlying security.[105]

The Commission recognizes that problems could arise in determining profits involving different derivative securities if both securities did not exist as of the time of the relevant purchase and sale. Under these circumstances, profits would be calculated with reference to changes in the value of whichever derivative security existed at both points of the short-swing transaction. If neither derivative security existed at both points of the transaction, the court would look to the change in value of the underlying security.

The Commission also seeks comment as to whether it would be preferable to provide a specific formula that does not offer courts a choice between using changes in the value of two different derivative securities. In particular, one alternative might calculate profit as the greater change in value in the derivative securities bought and sold over the relevant time period, provided that the change in value does not exceed the change in value of the underlying security. A second alternative might calculate profit as the lesser change in value in the derivative securities bought and sold over the relevant time period, provided that the change in value does not exceed the change in value of the underlying security.

b. *Options in a Merger Context.* The current rules provide an exemption for dispositions of underlying stock acquired from an option exercise where the disposition is pursuant to a merger, consolidation, or reclassification of the issuer's securities.[106] The only change initially proposed was to narrow the exemption to options acquired under a plan satisfying Rule 16b–3.

Given the proposed exemption of all exercises of in-the-money and at-the-money options, insiders could exercise their options and deliver the underlying equity securities into the merger without creating a short-swing transaction; thus the Rule may no longer be necessary.[107] Its retention, rather than providing equal treatment for stock and options, may provide preferential treatment for option holders; stock acquired upon exercise of an option could be sold as part of a merger in an exempt manner, but other acquisitions of stock could not. The Commission has not proposed to change further Rule 16b–6(c), but requests comment as to whether it should be deleted.

4. Expirations

While the initial proposals addressed short-swing profits recoverable from an expiration of a short option position,[108] the expiration of a long option position was not addressed. The revised proposed rule would exempt dispositions by expiration of long derivative security positions, where no value is received from the expiration.[109] Expirations of short derivative security positions would not be exempted, since there is an opportunity for short-swing profit.[110]

D. Subscription Rights

The current rules [111] provide an exemption for sales of subscription rights to acquire the underlying security that meet four specified criteria: 1) the rights are acquired from the issuer without payment of consideration; 2) the rights expire within 45 days; 3) the rights are issued on a pro rata basis to all holders; and 4) the rights are registered under the Securities Act. This rule was not, and is not, proposed to be changed.[112]

Under the proposed scheme, a subscription right would be deemed a derivative security such that an acquisition of a subscription right could be matched with a sale of any equity security to find a short-swing transaction. As derivative securities, these rights could be exercised in an exempt manner, pursuant to revised proposed Rule 16b–6(b). While subscription rights are similar to issuer options, they generally are granted to a class of security holders, rather than a limited group of employees. Comment is solicited on whether the general nature of the distribution provides a sufficient safeguard against abuse that an exemption for all pro rata grants of subscription rights is not appropriate. Because this rule provides an exemption for the sale of a subscription right, rather than its acquisition, it would not prevent a grant of a subscription right from being matched with a prior sale, for short-swing profit liability. Comment is solicited whether there should be an exemption for acquisitions, rather than sales. Comment is requested further as to whether any special exemption for subscription rights is necessary.

V. Employee Benefit Plans

Both the current and proposed rules provide exemptions for specified transactions involving employee benefit plans. The Commission proposes revisions to the original proposals concerning employee benefit plans in order to remove the potential for an unwarranted chilling effect upon many benefit plans. The changes are described below.[113]

A. Disinterested Administration

Under the proposed rules, a disinterested administrator could not participate in any discretionary plan of the issuer for the year before the transaction and could not be eligible to participate in any discretionary plan for the three years subsequent to the transaction. Commenters indicated that a one year prior and one year

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[104] Revised proposed Rule 16b–6(d). The revised rule is based upon the originally proposed Alternative A.

[105] For example, on April 1st an insider purchases a warrant for $2 with an exercise price of $10 a share and a market price of the underlying security of $9 per share. On May 1st, the insider sells an option for $2 with an exercise price of $15 a share while the underlying security was $15 per share. The warrant purchased on April 1st was selling for $9 on May 1st. Thus, the profit would appear to be $7 per share. However, the maximum recovery would be $6 per share (representing the change in the underlying stock).

[106] Current Rule 16b–6(c) (17 CFR 240.16b–6(c)); revised proposed Rule 16b–6(c).

[107] Under the current rules, if an insider exercises an option, it is considered a purchase. Thus, absent Rule 16b–6(c), option holders would be unable to deliver the underlying equity securities into the merger for six months, without becoming subject to Section 16(b) liability. This would no longer be true under the proposals.

[108] Proposed Rule 16b–6(e); revised proposed Rule 16b–6(e).

[109] For example, an insider purchases a call option with an exercise price of $20 per share. At expiration, the underlying stock is selling for $15 per share, rendering the option worthless. The disposition of the option at expiration would be deemed an exempt sale.

[110] For example, an insider sells short, or writes, a call option with an exercise price of $20 per share. The insider receives a $3 per share premium for the option. At expiration, the underlying stock is selling for $15 per share, rendering the option worthless. Since the holder will not exercise the option at expiration, the insider would profit $3 per share, the amount of the premium received. See revised proposed Rule 16b–6(e).

[111] Current Rule 16b–11 (17 CFR 240.16b–11).

[112] Revised proposed Rule 16b–2.

[113] See also the discussions of issuer grants and six month holding periods for plan securities in Sections IV.C.1 and IV.C.2.b. *supra.*

subsequent prohibition on participation in a discretionary plan should be a sufficient safeguard. The Commission has so revised the proposed rule.[114]

The proposed rules would have required a disinterested committee to exercise sole discretion in administering the plan. Commenters were concerned that the requirement might be interpreted to preclude other persons from performing ministerial functions such as bookkeeping. This was not intended and the revised proposed rule has been clarified.[115]

In response to comment received, the revised proposed rules would require all members of the committee to be disinterested, rather than a majority, and require that a committee be composed of at least two persons.[116]

In addition, the Commission has revised the proposed rules to permit interested directors to serve as administrators of plans that do not permit directors to participate. The current rule provides a similar opportunity but the proposed rules would have deleted it.[117] Different treatment for plans awarding securities to non-director officers is appropriate because there appears to be little opportunity for abuse where the participant has no ability to influence the administrator.

As an alternative to having a disinterested committee, the proposed rules provided that the disinterested administration requirement could be satisfied if insiders exercised no control or discretion in awarding securities under a plan where securities awards are determined automatically by application of a formula or standardized criteria,[118] but restricted formula amendments to once every six months. Commenters suggested that more amendments be permitted if made to comply with tax law changes and that job classifications and compensation levels be added to the list of standardized criteria. The revised proposed rule would incorporate each of these suggestions.[119]

B. Stock Appreciation Rights

Under the proposed rules, many SARs that can be settled in cash only would be excluded from the definition of "derivative security" and would not be viewed as equity securities.[120] Thus, they would be exempt from Section 16. SARs that are settled for stock would be treated as options. SARs that could have been settled in either cash or stock, but were settled in cash, would be treated as an exercise of an option and the simultaneous sale of the underlying stock.

Several commenters questioned the disparate treatment between SARs that may be settled in cash or stock and other forms of derivative securities. Under the proposed rules, SARs would have favored treatment over options because both the "purchase" at the time of exercise of the SAR and the "sale" upon receipt of cash would be exempt,[121] whereas a sale of stock received from an option exercise would not be exempt. A few commenters recommended that the distinction between the two be deleted.

The exemption for exercises in the proposed rules would resolve the concern that led to the Rule's adoption in 1976 [122] since the purchase portion of the constructive simultaneous purchase and sale upon exercise of SARs would be exempt so that long term profits would not be subject to short-swing profit recovery. Comment is solicited as to whether revised proposed Rule 16b–3(d) is unnecessary and therefore should be deleted.

C. Intra-plan Transactions

Many commenters were concerned that the proposed deletion of the intra-trust exemption for trusts holding less than 20 percent of the corpus [123] in issuer equity securities owned by insiders would have a chilling effect on the majority of tax qualified benefit plans. The revised proposed rules are intended to alleviate that concern by providing four limited exemptions suggested by commenters.[124] In each case, the insider's election to participate, the selection of an investment alternative and the intra-plan transaction would be exempt from Section 16(b). The election would not be reportable, but the intra-plan transaction would be reported on Form 5.

The first new proposal would exempt an irrevocable investment election made at least six months in advance of its effective date.[125] For example, an insider could elect within a thrift plan to move assets from a money market fund into company stock on March 1, if the "purchase" of company stock did not occur until September 1, at a price related to the market price on September 1. Thus, an insider would not be able to take advantage of inside information learned in February because the insider would be at market risk for six months. If the news were favorable, for example, it is assumed that the information would become public and the stock price would adjust accordingly in the ensuing six months. In this case, the election would not be the purchase or sale because no price was fixed. The purchase or sale would be deemed to occur on September 1, and would be reported accordingly.

The second new proposal would exempt investment elections, and the resulting transactions, made on specified dates that are at least six months apart.[126] For example, a plan could specify that participants could switch investment funds only on June 30th or December 31st. The participant could purchase or sell issuer securities on those dates in an exempt manner. Comment is requested, however, as to whether the alternative of using a pre-determined date or "window period" for conducting transactions would be an effective safeguard against abuse of inside information. Comment is requested also as to whether the specified date or "window period" is sufficient, in isolation, to warrant an exemption.[127] If pre-established dates for conducting transactions are a sufficient safeguard from abuse, comment is solicited as to whether this rule should adopt the same ten day "window period" approach of current Rule 16b–3(e).

The third new proposal would exempt elections by terminated or disabled employees to defer receipt of securities or cash from their plan account.[128] As

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[114] Revised proposed Rule 16b–3(c)(2).

[115] Revised proposed Rule 16b–3(b)(1)(i).

[116] *Id.* Current Rule 26b–3(b) (17 CFR 240.26b 3(b)) requires a committee of three or more persons, all of whom must be disinterested.

[117] Current Rule 16b–3(b)(2) (17 CFR 240.16b–3(b)(2)) would be incorporated partially into revised proposed Rule 16b–3(b)(1)(i).

[118] This is similar to current Rule 16b–3(b)(1)(iii) (17 CFR 240.16b–3(b)(1)(iii)).

[119] Revised proposed Rule 16b–3(b)(1)(ii).

[120] Revised proposed Rule 16a–1(c)(3).

[121] Revised proposed Rule 16b–3(d).

[122] Current Rule 16b–3(e) (17 CFR 240.16b–3(e)). Exchange Act Release No. 13097 (December 22, 1976) (42 FR 754).

[123] Current Rule 16a–8(b).

[124] Revised proposed Rule 16b–3(e). Although the revised proposed exemptions would be placed in revised proposed Rule 16b–3, plans not satisfying the disinterested administration conditions of Rule 16b–3(b) would be eligible to use the exemptions as well. The plan, however, would have to satisfy the definition of "plan" in revised proposed Rule 16b–3(c)(1).

[125] Revised proposed Rule 16b–3(e)(1).

[126] Revised proposed Rule 16b 3(e)(2).

[127] Current Rule 16b–3(e)(3)(iii) (17 CFR 240.16b–3(e)(3)(iii)), revised proposed Rule 16b–3(d)(3), uses a ten day "window period" as one safeguard in providing a safe harbor for cash exercises of SARs. The rule, however, has other safeguards to protect against abuse, such as a reporting requirement for issuers, a six month holding period, and compliance with other provisions of Rule 16b–3.

[128] Revised proposed Rule 16b–3(e)(3). Similar elections are protected under the current Rule 26b–

Continued

with the other intra-plan exemptions, the election would not be deemed a purchase or sale. Thus, for example, a retiring officer could elect to defer receipt of securities held by a retirement plan, or cash representing the value of the securities, without the election being deemed a purchase or sale until the securities or cash are received.[129] Many plans automatically distribute securities to participants upon termination, including retirement, while other plans may require terminated employees to sell their plan securities back to the issuer. Such automatic transactions might cause the terminated insider to engage inadvertently in a short-swing transaction. Under the revised proposal, an insider could defer the acquisition or sale to the issuer for six months to avoid a possible short-swing transaction. Comment is solicited on whether the revised proposal should exempt an insider's choice between stock or cash. Without an exemption, the receipt of cash would be treated as an exercise of an SAR.

The fourth new proposal would pertain to retirement and pension plans only and would exempt specifically a decision to participate or not participate in an on-going stock acquisition program, as well as the ultimate acquisition.[130] This exemption would be particularly advantageous to employees participating in an employee stock ownership plan ("ESOP" or "PAYSOP"). The exemption would require that the plan be open to all employees generally and that participants not be entitled to distributions until death, retirement, or termination unless the plan imposes significant penalties. This codifies current interpretive requirements.[131] In addition, the proposed rule would require that if participants cease participation, they may not elect to participate again for at least six months. This would limit the opportunity for abuse by limiting the ability to change their participation in a short term manner. Comment is solicited as to whether the rule also should require that an insider not cease participation for the six months after initiating participation and whether there should be dollar amount restrictions[132] upon a participant's decision to increase or decrease his or her contribution to the plan. Comment is solicited further on whether the restrictions on participation are sufficient safeguards against abuse.

D. Distributions

In response to commenter concerns, a new rule would exempt distributions from a plan where the acquisition of the securities distributed had been reported previously pursuant to Section 16(a).[133] Under the current rules, most intra-plan transactions are exempt from both reporting and short-swing liability. However, when securities are distributed from the plan, they are viewed as purchases by the participant.[134] While, under the current rules, most intra-plan transactions are not reportable, the proposed scheme would require reports for these transactions. Specified intra-plan transactions complying with revised proposed Rule 16b-3(e) would be reported annually on Form 5, while non-exempt transactions would be reported currently on Form 4. Thus, since the acquisition of the securities within a plan would have been reported previously, there would be merely a change in the form of ownership, rather than the substance of ownership.

The analysis is similar to that for derivative securities—just as an option holder has an indirect interest in the underlying security, insiders have indirect beneficial ownership of securities held in a plan. The distribution of securities from a plan is analogous to an exercise of an option in that the form of beneficial ownership is changed merely from an indirect to a direct interest. Distributions exempt pursuant to the revised proposed rule would be reported annually on Form 5.

This new rule, however, would not exempt distributions of securities that had not been reported prior to the distribution. For example, if an insider was the beneficiary of a trust where the trustee exercised investment discretion, the acquisition of stock without the prior approval of the insider beneficiary would be exempt from reporting and liability.[135] If the trustee were later to distribute the stock to the beneficiary, this would be a purchase by the insider, not eligible for exemption under revised proposed Rule 16b-3(f). The proposed scheme requires a predistribution reported purchase before the constructive purchase at distribution can be exempt. If a distribution is exempt because it represents merely a change in the form of ownership, from indirect to direct, there can be no exemption where an insider has not reported an indirect interest in the securities.

VI. Synopsis of Other Changes

Other changes are discussed in the order in which they would appear if the revised proposed amendments are adopted. Charts showing how the current rules would be restructured and comparing them to the revised proposed rules are included in Section X below.

A. Definition of Owner of any Security

For purposes of determining standing, the initial proposed rules defined "owner of any security of the issuer" as either a current beneficial owner of securities of the issuer at the time of filing the suit or a former beneficial owner who was compelled to dispose of the securities because of a business combination resulting in the issuer's becoming a non-public company. This was intended to address situations where the issuer becomes a subsidiary of another company, as well as situations involving leveraged buyouts and other forms of securities ownership redistribution.

In response to comment received, the Commission reproposes a more limited definition.[136] The revised proposed definition would extend standing only to former security holders who had filed suit before surrendering their securities. Comment is solicited whether a former security holder should be given a specified number of days after the merger, or after the filing of the Section 16(a) report disclosing the transaction, to institute suit (*e.g.*, 60 days). Comment is solicited further as to whether standing should be extended to security holders who have notified the issuer of a short-swing transaction, but are compelled to surrender their securities because of a business combination during the 60 days that the statute requires security holders to wait before instituting suit. To ensure that the plaintiff has a sufficient financial interest in the outcome to warrant an extension of standing, the Commission requests comment as to whether the rule

3(d)(2) definition of "exercise of an option." Given the proposed treatment of option exercises and revised proposed Rule 16b-3(e), the definition would not be needed.

[129] This would be in accord with present staff interpretation. *See, e.g., TCI International, Inc.* (April 5, 1989) (exemption for election by participant to receive cash distribution of ESOP account at termination).

[130] Revised proposed Rule 16b-3(e)(4) would replace current Rule 16a-8(g)(3) (17 CFR 240.16a-8(g)(3)). Rule 16a-8(g)(3) was included in the 1988 proposals as Rule 16a-5(d)(2)(iii). As a result of the move from the Section 16(a) rules to the Section 16(b) rules, transactions exempted by this provision would have to be reported on Form 5.

[131] Current Rule 16a-8(g)(3); Release No. 18114 Q.71.

[132] For example, the Rule could provide a $10,000 limit on the amount of change per month, or require that no increase or decrease in participation shall exceed 50 percent of the current contribution.

[133] Revised proposed Rule 16b-3(f).

[134] *See* Release No. 18114 Q.64.

[135] Revised proposed Rule 16a-8(d)(1).

[136] Revised proposed Rule 16a-1(g).

should require that the plaintiff own securities of the surviving company.

B. Exemptive Rules under Section 16(b)

1. Bona Fide Gifts and Inheritance

The rules as originally proposed and as reproposed would exempt all acquisitions and dispositions as a result of bona fide gifts or the laws of descent because these transactions generally do not provide opportunities for speculative abuse.[137] One commenter was concerned that gifts to family members not sharing the same residence may provide opportunities for abuse.[138] While the rule is reproposed without change, comment is solicited as to whether the exemption should be narrowed to cover only gifts to parties other than immediate family members or only gifts to charitable institutions.

2. Exemption of Issuer Redemptions

The Commission proposes to revise the language in the current rule, without any substantive change, to clarify the limited circumstances where the exemption for issuer redemptions is available.[139] Comment is requested on whether this rule is a useful exemption or should be deleted.

3. Stock Splits and Stock Dividends

The original proposals specified that pro rata stock splits and stock dividends were exempt generally from Section 16(b), and therefore eligible for reporting on Form 5.[140] However, no rule was proposed explicitly exempting these transactions. The Commission is persuaded by the commenters' suggestions that an exemptive rule would be preferable. Accordingly, a new rule would exempt stock splits and stock dividends relating to the issuer's securities that are applicable to all holders of the class of equity securities.[141] Moreover, the Commission requests comment as to whether pro rata stock splits and dividends should be exempt from the reporting requirements as well.

4. *Canadian Issuers*

Under current rules, Canadian issuers are treated differently from all other foreign private issuers under the Exchange Act, principally with respect to use of Form 20–F [142] for registration and reporting. Canadian issuers, unlike other foreign issuers, currently are able to use Form 20–F only for registration and reporting obligations pursuant to Section 12(g) of the Exchange Act.[143] Securities of foreign issuers eligible to use Form 20–F are exempt from Section 16 of the Exchange Act.[144]

The Commission sees little reason to single out Canadian issuers for application of Section 16, and therefore proposes to provide an exemption from reporting, short-swing liability, and the short sale prohibition of Section 16(c)[145] for all insiders of Canadian issuers, not just those reporting because of Section 12(g) registration.[146].

VII. Revisions to Forms 3 and 4

Several commenters complained that the printing and spaces on the forms were too small. They suggested a series of two page forms so that insiders would have sufficient space for disclosures. In response, the Commission proposes non-substantive changes to Forms 3 and 4, as well as proposed Form 5, to improve the format. The instructions to the Forms also would be revised for clarity and consistency.

Persons have inquired of the staff whether a computer-generated form substantially identical to the Commission's printed form would be acceptable. The Commission would have no objection if the generated forms are substantially identical, printed on 8½"x11" paper and manually signed.[147]

The Commission proposes to amend Instruction 1(b) to Form 3 to achieve greater conformity with the statutory language of Section 16(a). Instruction 1(b) would be revised to make it clear that insiders of a new Section 12 registrant do not have ten days after effectiveness to file, but must file on or before effectiveness of the registration statement.

VIII. Compliance With Section 16(a)

A. Lack of Compliance with Section 16(a)

As stated in the 1988 Release, the Commission is concerned about the widespread lack of compliance with the reporting requirements under Section 16(a).[148] In response to the problem, the Commission proposed a four-part response: (1) Simplifying the reporting provisions to focus on timely reporting of those securities transactions that are more discretionary in nature and present a greater opportunity for abuse; (2) providing for annual reporting on Form 5 by insiders of their securities ownership and previously unreported transactions; (3) requiring annual disclosure by companies pursuant to proposed Item 405 of Regulation S–K regarding insiders who have failed to comply timely with the filing requirements within the past year; and (4) supporting legislation to provide fining authority for violations of Section 16(a).[149]

The Commission is particularly disappointed to find that notwithstanding the publicity and concerns expressed about the substantial delinquency in filings, there has not been a substantial improvement in compliance. In a recent study, the Commission found 36.7 percent of the transactions reported in calendar year 1988 were reported more than three days late. As of June 10, 1989, the delinquency rate was 34.7 percent for transactions reported in the first five months of 1989. This reinforces the Commission's conclusion that the proposed proxy disclosure and fines are necessary.

B. Revised Disclosure Requirements

The Commission is substantially revising proposed Item 405 of Regulation S–K. The Item would: (1) Make it clear that the disclosure requirements extend to any person who was an insider at any time during the issuer's fiscal year; (2) require separate disclosure of transactions reported late, forms filed late and failures to file; (3) provide that forms delivered to the issuer within three calendar days would be presumed timely filed for purposes of the disclosure requirement; and (4) provide

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[137] Revised proposed Rule 16b–5.

[138] Gifts to members of the immediate family sharing the same residence would be attributed back to the insider donor pursuant to revised proposed Rule 16a–1(a)(2)(ii)(A); thus no change in beneficial ownership would occur.

[139] Current Rule 16b–5 (17 CFR 240.16b–5); revised proposed Rule 16b–4.

[140] *See* 1988 Release, n.93 (53 FR 50005).

[141] Revised proposed Rule 16b–10.

[142] 17 CFR 249.220f.

[143] 15 U.S.C. 78*l*(g) (1982).

[144] Rule 3a12–3(b) (17 CFR 240.3a12–3(b)).

[145] Revised proposed Rule 16a–10.

[146] Insiders of Canadian issuers have reporting requirements similar to those imposed by Section 16(a). It should be noted that the Commission's proposal concerning multi-jurisdictional disclosure would provide that insiders of Canadian issuers need comply only with Canadian reporting requirements. *See* Exchange Act Release No. 27055 (July 6, 1989) (54 FR 32226). If the revised proposed exemption in this release is adopted, the proposal contained in the multi-jurisdictional release would be unnecessary.

[147] The Commission ultimately expects these forms to be filed in electronic format after implementation of its operational EDGAR system ("Electronic Data Gathering, Analysis and Retrieval").

[148] A Commission study found that over 40 percent of all transactions required to be reported during 1986–88 were filed more than three days late. *See* Release No. 26333, Section VIII.A. at 107–108 (53 FR 50017).

[149] *See* "Securities Law Enforcement Remedies Act of 1989," S. 647 and H.R. 975. This legislation would, *inter alia*, provide the Commission with fining authority for violations of section 16(a).

a safe harbor for issuers with respect to disclosure of insiders not filing a Form 5. An issuer would not be required to disclose the name of an insider failing to file a Form 5 where the issuer obtains a written representation form the insider that no Form 5 filing is required if the representation is retained for two years.[150] Comment is requested whether proxy statements or other filings containing disclosure of delinquent filers should reflect on the cover page or in the transmittal letter filed with the Commission that the document contains such disclosure.

IX. Transition to New System

If the revised proposed rules are adopted, provisions for a transition from the current rules to the revised proposed rules appear necessary in the areas of: (1) new reporting persons; (2) reporting of, and exemptions for, transactions involving derivative securities: (3) transactions exempt under current Rule 16b–3 and/or other current rules involving employee benefit plans; and (4) disclosure under revised proposed Item 405 of Regulation S–K.

Those who become reporting persons as a result of the new rules would be required to file a Form 3 on or before the effective date of the rules. To provide sufficient preparation time, the Commission would make the rules effective 45 days after adoption.

Derivative securities acquired prior to the effective date of the revised proposed rules would be subject to a special transition framework regarding reporting and liability. An insider would have to report beneficial ownership of these securities on the first Form 4 or Form 5 otherwise required to be filed after the effective date. These derivative securities would not be eligible for the exemptions provided by revised proposed Rule 16b–6 unless held at least six months, and either previously reported as owned or shown as disposed of in reporting the transaction for which the revised proposed Rule 16b–6 exemption is intended.

The Commission believes that registrants should have a reasonable opportunity to effect an orderly transition to the proposed regulatory scheme for employee benefit plans. Accordingly, there would be a 16-month phase-in period for employee benefit plans, during which time exemptions under the current rules would continue to be available. This period should provide registrants sufficient time to restructure their plans to take advantage of any available exemptions under the revised proposed rules an, if necessary, to seek shareholder approval at an annual meeting.

Disclosure of delinquent filings under revised proposed Item 405 of Regulation S–K would be required in proxy and information statements, Form 10–K and N–SAR reports for fiscal years ending more than six months after the effective date of the revised proposed rules. The disclosure would be required based on reports filed for the portion of the fiscal year after the effective date when insiders would be required to furnish copies of their filings to the issuer.

X. Charts Comparing Current and Revised Proposed Rules

A. The following chart lists the current rules and the corresponding revised proposed rules and indicates which rules would be changed substantively or reorganized. The proposed rule number in the original proposal is indicated in brackets where it differs from the revised proposed rule number.

Current Rule	Content	Revised Proposed Rule	Substantive Changes
12h–2	Offerings before 1967.	Deleted	Yes.
16a–1(a)	Forms 3 & 4.	16a–3(a)	No.
(b)	Filing another form 3.	16a–3(b)	No.
(c)	Copies to exchange.	16a–3(c)	No.
(d)	Pre-insider reporting.	16a–2(a)	Yes.
(e)	Post-insider reporting.	16a–2(b)	No.
16a–2(a)	10 percent holders.	16a–1(a)	Yes.
(b)	Derivative securities.	Deleted	Yes.
16a–3	Disclaimer	16a–1(a)(4)	Yes.
16a–4	Fiduciaries	16a–2(d)	Yes.
16a–5	Odd-lot dealers.	16a–5	No [16a–9].
16a–6	Derviative securities.	16a–4	Yes.
16a–7	Multiple filings.	16a–3(d)	No.
16a–8	Trusts	16a–8 &16a–1(a)(5).	Yes [16a–5].
16a–9	Small trades and gifts.	16a–6 & 16b–5.	Yes.
16a–10	Exemption from Section 16(b).	No [16a–10].	
16a–11	DRIPs	16b–9	No.
16b–1	Investment companies.	16b–1(a)	No.
16b–2	Distributions	16a–7	Yes.
16b–3	Benefit plans.	16b–3	Yes.
(a)	Shareholder approval.	Deleted	Yes.
(b)	Disinterested administration.	16b–3(b)	Yes.
(c)	Plan limits	Deleted	Yes.
(d)	Definitions	16b–3(c)	Yes.
(e)	SARs	16b–3(d)	No.
16b–4	Utility holding companies.	16b–1(b)	No.
16b–5	Redemptions.	16b–4	Yes.
16b–6	Options	16b–6	Yes.
(a)	Holding period.	Deleted	Yes.
(b)	Formula	16b–6(d)	Yes.
(c)	Mergers	16b–6(c)	Yes.
(d)	Short sales	Deleted	Yes.
(e)	Burden of proof.	Deleted	Yes.
(f)	Prior judgments.	Deleted	Yes.
16b–7	Mergers	16b–7	No.
16b–8	Voting trusts.	16b–8	No.
16b–9	Conversions	16b–6(b)	Yes.
16b–10	Railroads	16b–1(c)	No.
16b–11	Subscription rights.	16b–2	No.
16c–1	Brokers	16c–1	No.
16c–2	Distributions	16c–2	Yes.
16c–3	When-issued securities.	16c–3	No.
16e–1	Arbitrage	16e–1	No.
30f–1	Investment companies.	30f–1	No.

* * * * *

B. The following chart lists the revised proposed rules and the corresponding current rules, and indicates which current rules would be changed substantively or reorganized. Where the revised proposed rule number differs from the rule number as originally proposed, the originally proposed rule number is indicated in brackets.

[150] A written response to an appropriate question on the annual questionnaire to insiders would satisfy the requirement.

Revised Proposed Rule	Content	Current rule	Substantive Changes
16a-1(a)(1-3)	Beneficial owner	None	N/A.
(a)(4)	Disclaimer	16a-3	Yes.
(a)(5)	Remote interests	16a-8(g)	Yes [16a-5(d)].
(b)	Call equivalent position	None	N/A [16a-1(d)].
(c)	Derivative securities	None	N/A.
(d)	Equity security of such issuer	None	N/A [16a-1(f)].
(e)	Immediate family	16a-8(e)	Yes [16a-1(b)].
(f)	Officer	None	N/A [16a-1(g)].
(g)	Owner of any security of the issuer	None	N/A [16a-1(h)].
(h)	Put equivalent position	None	N/A [16a-1(e)].
16a-2(a)	Pre-insider reporting	16a-1(d)	Yes.
(b)	Post-insider reporting	16a-1(e)	No.
(c)	Transaction creating 10 percent holder	None	N/A.
(d) & (e)	Fiduciaries	16a-4(a) & (b)	Yes [16a-5(b) & (c)].
16a-3(a)	Forms 3, 4 & 5	16a-1(a)	Yes.
(b)	Filing another form 3	16a-1(b)	No.
(c)	Copies to exchange	16a-1(c)	No.
(d)	Multiple filings	16a-7	No.
(e)	Copies to issuer	None	N/A.
(f)	Form 5	None	N/A.
(g)	Form 5 transactions	None	N/A [16a-3(f)].
16a-4	Derivative securities	16a-2(b)	Yes.
16a-5	Odd-lot dealers	16a-5	No [16a-9].
16a-6	Small acquisitions	16a-9	Yes.
16a-7	Distributions	16b-2	Yes.
16a-8(a)	Trust 10 percent holder	16a-8(c)	No [16a-5(a)(1)].
(b)	Insider trustee	None	N/A [16a-5(a)(2)].
(c)	Beneficial ownership	16a-8(a)	No [16a-5(a)(3)].
(d)	Attribution	16a-8(b)	Yes [16a-5(a)(4)].
(e)	Persons also subject to sections 16(b) & (c).	None	N/A [16a-5(a)(5)].
16a-9	Exemption from Section 16(b)	16a-10	No [16a-10].
16a-10	Canadian issuers	None	N/A.
16b-1(a)	Investment companies	16b-1	No.
(b)	Utility holding companies	16b-4	No.
(c)	Railroads	16b-10	No.
16b-2	Subscription rights	16b-11	No.
16b-3	Benefit plans	16b-3	Yes.
16b-3(a)	Exempt transactions	16b-3	Yes.
16b-3(b)	Disinterested administration	16b-3(b)	Yes.
(c)	Definitions and conditions	16b-3(d)	Yes.
(d)	SARs	16b-3(e)	No.
(e)	Intra-plan transactions	None	N/A.
(f)	Distributions	None	N/A.
16b-4	Redemptions	16b-5	Yes.
16b-5	Gifts and inheritance	16a-9(b)	Yes.
16b-6(a)	Derivative security purchase/sale	None	N/A.
(b)	Conversions/exercises	16b-9	Yes.
(c)	Mergers	16b-6(c)	Yes.
(d)	Profit formula	16b-6(b)	Yes.
(e)	Expiring short position profit	None	N/A.
16b-7	Mergers	16b-7	No.
16b-8	Voting trusts	16b-8	No.
16b-9	DRIPs	16a-11	Yes.
16b-10	Stock splits and dividends	None	N/A.
16c-1	Brokers	16c-1	No.
16c-2	Distributions	16c-2	Yes.
16c-3	When-issued securities	16c-3	No.
16c-4	Derivative securities short positions	None	N/A.
16d-1	Marketmakers	None	N/A.
30f-1	Investment companies	30f-1	No.

XI. Request for Comment

Any interested person wishing to submit written comments on: the proposed amendments and additions to Rules 16a-1 through 16c-3, Schedule 14A, Forms 10-K, 3 and 4; the addition of new Rule 16c-4, 16d-1 and new Form 5; the deletion of Rule 12h-2 under the Exchange Act; the addition of new Item 405 to Regulations S-K; and the proposed amendments to Rule 30f-1 and Form N-SAR under the Investment Company Act; as well as on other matters that might have an impact on the proposals contained herein, is requested to do so. In addition, the Commission requests comments on whether any further changes to the Section 16 rules are necessary or appropriate at this time. The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act, Investment Company Act, or Public Utility Holding Company Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.[151]

XII. Cost-Benefit Analysis

As in the 1988 Release, the Commission invites commenters to provide views and data as to the costs and benefits associated with the revised proposed rules. It appears to the Commission that the revised proposals

[151] 15 U.S.C. 78w(a) (1982).

would result in further savings by: (1) Requiring Form 5 filings from only those insiders conducting transactions reportable on Form 5; (2) removing the certification of compliance requirement of Form 5; (3) creating a de minimis three calendar day exemption from proxy disclosure of late filings; (4) providing an exemption for Schedule 13G Institutions from the ten percent holder determination; (5) expanding the exclusion for cash-only derivative securities; (6) specifically exempting stock splits and stock dividends; and (7) exempting insiders of Canadian issuers from Section 16.

The revised proposals may increase reporting, recordkeeping, and compliance requirements by: adding principal financial officers, controllers or principal accounting officers, and officers of a parent to the definition of "officer."

XIII. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 has been prepared concerning the revised proposed amendments to Rules 16a–1 through 16c–3, Schedule 14A, Forms 10–K, 3 and 4; the addition of new Rules 16c–4, 16d–1, and a new Form 5; the deletion of Rule 12h–2 under the Exchange Act; as well as the addition of a new Item 405 to Regulation S–K. Also a subject of this analysis are revised proposed amendments to Rule 30f–1 and Form N–SAR under the Investment Company Act. The analysis notes that the revised proposed amendments are intended to help assure that persons meet their reporting obligations, assist the fair and effective operation of Section 16(b) by limiting the opportunities for abuse, and remove transactions that do not involve the potential for abuse from the scope of the rules. As discussed more fully in the analysis, many of the reporting persons that the revised proposed amendments would affect are small businesses or organizations, as defined by the Commission's rules.

It is expected that the overall effect of the proposed amendments would be to decrease significantly the impact of reporting, recordkeeping, and compliance requirements upon reporting persons subject to Section 16, although certain of the proposed amendments may increase such requirements, as noted in the analysis.

The analysis discusses several possible significant alternatives to the proposed amendments including, among others, establishing different compliance or reporting requirements for small businesses and organizations or exempting them from all or part of the proposed requirements. As discussed more fully in the analysis, implementing any of these alternatives either would be duplicative of the revised proposed amendments or would not be consistent with the Exchange Act, Investment Company Act, or Public Utility Holding Company Act.

Comments are encouraged on any aspect of the analysis. A copy of the analysis may be obtained by contacting Brian J. Lane or Brian J. Lynch, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

XIII. Statutory Basis

The amendments to the proxy rules, Form 10–K, Regulation S–K, and the Section 16 rules are being proposed by the Commission pursuant to Exchange Act Sections 3(a)(11),[152] 3(b),[153] 9(b),[154] 10(a),[155] 12(h),[156] 13(a),[157] 14,[158] 16, and 23(a). The amendments to Form N–SAR and Rule 30(f) are being proposed pursuant to Investment Company Act Sections 30 and 38.[159] As the Section 16 rules relate to the Investment Company Act and the Public Utility Holding Company Act, they are proposed pursuant to Investment Company Act Sections 30 and 38, and Public Utility Holding Company Act of 1935 Sections 17[160] and 20,[161] respectively.

List of Subjects in 17 CFR 229, 240, 249, 270, and 274

Reporting and recordkeeping requirements, and securities.

XIV. Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for Part 229 continues to read as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 76 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m, 78n, 78l(d), 78w(a), unless otherwise noted.

2. § 229.405 is added to Subpart § 229.400 to read as follows:

§ 229.405 (Item 405) Compliance with Section 16(a) of the Exchange Act.

Every registrant having a class of equity securities registered pursuant to Section 12 of the Exchange Act (15 U.S.C. 78*l*), every closed-end investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a—1 *et seq.*) and every holding company registered pursuant to the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) shall:

(a) Describe briefly its procedures for assisting directors, officers, beneficial owners of more than ten percent of any class of equity securities of the registrant, and any other person subject to Section 16 of the Exchange Act because of the requirements of Section 30 of the Investment Company Act or of Section 17 of the Public Utility Holding Company Act ("reporting persons"), in complying with Section 16(a) of the Exchange Act; and

(b) Based upon a review of Forms 3 and 4 furnished to the registrant during and with respect to its most recent fiscal year and Forms 5 furnished to the registrant with respect to its most recent fiscal year, disclose the following:

(1) Identify each person who was a reporting person at any time during the fiscal year and failed to file on a timely basis reports required by Section 16(a) of the Exchange Act during that fiscal year or prior fiscal years.

(2) For each such person, set forth the number of late reports, the number of transactions that were not reported on a timely basis, and the failure to file any required Section 16(a) report.

(c) With respect to the disclosure required by paragraph (b) of this Item:

(1) A form received by the registrant within three calendar days of the required filing date may be presumed to have been filed with the Commission by the required filing date.

(2) The registrant may rely on a written representation from the reporting person that no Form 5 is required if the registrant maintains for two years a file of such written

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[152] 15 U.S.C. 78c(a)(11) (1982).
[153] 15 U.S.C. 78c(b) (1982).
[154] 15 U.S.C. 78i(b) (1982).
[155] 15 U.S.C. 78j(a) (1982).
[156] 15 U.S.C. 78*l*(h) (1982).
[157] 15 U.S.C. 78m(a) (1982).
[158] 15 U.S.C. 78n (1982).
[159] 15 U.S.C. 80a–29, 80a–37 (1982).
[160] 15 U.S.C. 79q (1982).
[161] 15 U.S.C. 79t (1982).

representations, a copy of which shall be made available to the Commission or its staff upon request.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w).

§ 240.12h–2 [Removed]

2. Section 240.12h–2 is removed.

3. By revising Item 7(b) of § 240.14a–101 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 7. Directors and executive officers.

* * * * *

(b) The information required by Items 401, 404(a) and (c), and 405 of Regulation S–K (§ 229.401, § 229.404 and § 229.405 of this chapter).

* * * * *

4. Sections 240.16a–1 through 240.16a–10 are revised and § 240.16a–11 is removed, and the undesignated center heading preceding them is republished to read as follows:

Reports of Directors, Officers, and Principal Shareholders

§ 240.16a–1 Definition of terms.

Terms defined in this Rule shall apply solely to Section 16 of the Act and the rules thereunder. These terms shall not be limited to Section 16(a) but shall apply to all subsections under Section 16.

(a) The term "beneficial owner" shall have the following applications:

(1) Solely for purposes of determining whether a person is a beneficial owner of more than ten percent of any class of equity securities registered pursuant to Section 12 of the Act, the term "beneficial owner" shall mean any person who is deemed a beneficial owner pursuant to the rules under Section 13(d) of the Act; *provided, however,* that an institution eligible to file a Schedule 13G (§ 240.13d–102) pursuant to § 240.13d–1(b)(1) with respect to a class of equity securities is not deemed the beneficial owner of securities of such class that are held in fiduciary accounts.

Note: Pursuant to this Rule, a person deemed a beneficial owner of more than ten percent of any class of equity securities registered under Section 12 of the Act would file a Form 3, but the securities holdings disclosed on Form 3, and changes in beneficial ownership reported on subsequent Forms 4 or 5, would be determined by the definition of "beneficial owner" in paragraph (a)(2) of this Rule.

(2) Other than for purposes of determining whether a person is a beneficial owner of more than ten percent of any class of equity securities registered under Section 12 of the Act, the term "beneficial owner" shall mean any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares a direct or indirect pecuniary interest in the equity securities, subject to the following:

(i) The term "pecuniary interest" in any class of equity securities shall mean the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the subject securities.

(ii) The term "indirect pecuniary interest" in any class of equity securities shall include, but not be limited to:

(A) Securities held by members of a person's immediate family sharing the same household; *provided, however,* that the presumption of such beneficial ownership may be rebutted.

(B) A general partner's proportional interest in the portfolio securities held by a general or limited partnership. The general partner's proportional interest shall be the greater of:

(*1*) The general partner's share of the partnership's profits, including profits attributed to any limited partnership interests held by the general partner and any other interests in profits that arise from the purchase and sale of the partnership's portfolio securities; or

(*2*) The general partner's share of the partnership capital account, including the share attributable to any limited partnership interest held by the general partner.

(C) A fee received by any broker, dealer, bank, insurance company, investment company, investment adviser, investment manager, trustee or person or entity performing a similar function; *provided, however,* that no pecuniary interest shall be present where:

(*1*) The fee is based upon the gains from a portfolio if the amount of the fee is calculated based upon net capital gains and/or net capital appreciation generated from the portfolio or from the fiduciary's overall performance over a period of one year or more; and

(*2*) Equity securities of the issuer do not account for more than ten percent of the portfolio;

(D) A person's right to dividends separated from the underlying securities that is a separate security or trades separately. Otherwise, a right to dividends alone shall not represent a pecuniary interest in the securities;

(E) A person's proportional interest as beneficiary or settlor in the securities of a trust, as specified in § 240.16a–8; and

(F) A person's right to acquire equity securities through the exercise or conversion of any derivative security, whether or not presently exercisable.

(iii) A pecuniary interest shall not include a person's proportional interest in the portfolio securities held by a corporation in which the person owns securities, if:

(A) The corporation is subject to the reporting requirements of Section 13 or 15(d) of the Act as a result of registration of equity securities under the Securities Act of 1933 or Section 12 of the Act; or

(B) The person is not a control person of the corporation and does not have or share voting or investment power over that corporation's portfolio.

(iv) For purposes of this Rule, the term "portfolio securities" shall mean all securities owned by an entity other than securities of the entity.

(*3*) Where more than one person subject to Section 16 is deemed to be a beneficial owner of the same equity securities, all such persons must report as beneficial owners of the securities. In such cases, the amount of short-swing profit recoverable shall not be increased above the amount recoverable if there were only one beneficial owner.

(*4*) Any person filing a statement pursuant to Section 16(a) of the Act may state that the filing shall not be construed as an admission that such person is, for purposes of Section 16 of the Act, the beneficial owner of any equity securities covered by the statement, unless beneficial ownership is mandated by a rule under Section 16 of the Act. A person may rebut the presumption of beneficial ownership under § 240.16a–1(a)(2)(ii)(A).

(*5*) The following interests are deemed not to confer beneficial ownership for purposes of Section 16 of the Act:

(i) The remainder interest of a trust, provided that the person with the remainder interest has no power, directly or indirectly, to make purchase or sale decisions for the trust;

(ii) Interests in portfolio securities held by any holding company registered under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*); and

(iii) Interests in portfolio securities held by any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

(b) The term "call equivalent position" shall mean a derivative security position that increases in value as the value of

the underlying equity increases, including, but not limited to, a long convertible security, a long call option, and a short put option position.

(c) The term "derivative securities" shall mean any option, warrant, convertible security, stock appreciation right, or other similar right related to an equity security, but shall not include:

(1) The right of a pledgee of securities to sell the pledged securities;

(2) The right of all security holders of an issuer to receive securities pro rata, or the obligation to dispose of securities, as a result of a merger, exchange offer, or consolidation involving the issuer of the securities;

(3) Securities that either are awarded pursuant to an employee benefit plan satisfying the provisions of § 240.16b–3(b) or contain a fixed date of redemption at least six months after award, which can be exercised only for cash and permit no discretion to receive an equity security in lieu of cash; or

(4) Broad-based index options and broad-based index futures.

(d) The term "equity security of such issuer" shall mean any equity security or derivative security of or relating to an issuer, whether or not issued by that issuer.

(e) The term "immediate family" shall mean any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and shall include adoptive relationships.

(f) The term "officer" shall mean an issuer's president, principal financial officer, controller or principal accounting officer, any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function or any other person who performs similar policy-making functions for the issuer. Officers of the issuer's parent(s) or subsidiaries shall be deemed officers of the issuer if they perform such policy-making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership.

(g) The term "owner of any security of the issuer" for purposes of Section 16(b) of the Act shall mean a beneficial owner of securities of the issuer at the time of filing a lawsuit under Section 16(b) of the Act. If as a result of a business combination of the issuer, a beneficial owner of any security of the issuer is required to surrender the securities due to such business combination, such person shall continue to be deemed a beneficial owner until resolution of the lawsuit if the suit was filed prior to the surrender of securities.

(h) The term "put equivalent position" shall mean a derivative security position that increases in value as the value of the underlying equity decreases, including, but not limited to, a long put option and a short call option position.

§ 240.16a–2 Persons and transactions subject to Section 16.

All directors, officers, and persons who are the beneficial owners of more than ten percent of any class of equity securities ("ten percent beneficial owner") registered pursuant to Section 12 of the Act shall be subject to the provisions of Section 16, subject to the following:

(a) Transactions conducted by a director or officer in the six months prior to the first transaction requiring the filing of a Form 4 (§ 249.104) shall be listed on such Form 4 and shall be subject to Section 16 of the Act only if the director or officer became subject to Section 16 solely as a result of the issuer registering a class of equity securities pursuant to Section 12 of the Act.

(b) Transactions conducted by a person who was a director or officer within six months after ceasing to be a director or officer shall be subject to Section 16 of the Act; *provided, however,* that no Form 4 need be filed for a transaction occurring at least six months after the latest transaction giving rise to a Form 4 filing requirement.

(c) The transaction that results in a person becoming a ten percent beneficial owner is not subject to Section 16 of the Act unless the person otherwise is subject to Section 16. A ten percent beneficial owner not otherwise subject to Section 16 must report only those transactions conducted while the beneficial owner of more than ten percent of a class of equity securities of the issuer registered pursuant to Section 12 of the Act.

(d) A fiduciary is exempt from the provisions of Section 16(a) under the Act for the 12 months following appointment and qualification, to the extent the fiduciary is acting as:

(1) Executor or administrator of the estate of a decedent;

(2) Guardian or member of a committee for an incompetent; or

(3) Receiver, trustee in bankruptcy, assignee for the benefit of creditors, conservator, liquidating agent, or other similar person duly authorized by law to administer the estate or assets of another person.

(e) After the 12 month period following appointment or qualification, a fiduciary previously exempt pursuant to paragraph (d) of this section shall become subject to Section 16 only where the estate or trust is a beneficial owner of more than ten percent of any class of equity security registered pursuant to Section 12 of the Act, or the fiduciary is otherwise subject to Section 16 of the Act.

§ 240.16a–3 Reporting transactions and holdings.

(a) Initial statements of beneficial ownership of equity securities required by Section 16(a) of the Act shall be filed on Form 3 (§ 249.103). Statements of changes in beneficial ownership required by that Section shall be filed on Form 4 (§ 249.104). Annual statements shall be filed on Form 5 (§ 249.105). All such statements shall be prepared and filed in accordance with the requirements of the applicable form.

(b) A person filing statements pursuant to Section 16(a) of the Act with respect to any class of equity securities registered pursuant to Section 12 of the Act need not file an additional statement on Form 3 (§ 249.103):

(1) When an additional class of equity securities of the same issuer becomes registered pursuant to section 12 of the Act; or

(2) When such person assumes a different or an additional relationship to the same issuer (for example, when an officer becomes a director).

(c) Any issuer that has equity securities listed on more than one national securities exchange may designate one such exchange as the only exchange with which reports pursuant to section 16(a) of the Act need be filed. Such designation shall be made in writing and shall be filed with the Commission and with each national securities exchange on which any equity security of the issuer is listed. The obligation to file with each national securities exchange on which any equity security of the issuer is listed shall be satisfied by filing with the designated exchange.

(d) Any person required to file a statement with respect to securities of a single issuer under both section 16(a) of the Act and either section 17(a) of the Public Utility Holding Company Act of 1935 or section 30(f) of the Investment Company Act of 1940 may file a single statement containing the required information, which will be deemed to be filed under both Acts.

(e) Any person required to file a statement under section 16(a) shall, not later than the time the statement is

transmitted for filing, send or deliver a duplicate to the issuer's corporate secretary or other person designated by the issuer.

(f) A Form 5 shall be filed by every person who at any time during the fiscal year was subject to Section 16. The Form shall be filed within 45 days after the issuer's fiscal year end; *provided, however,* that no Form 5 shall be required where:

(1) There have been no transactions conducted that are required to be reported on Form 5; and

(2) All transactions and holdings that previously were required to be reported on Form 3, 4, or 5 have been reported as of the due date of the Form 5.

(g) All transactions shall be reported on Form 4, except that the following transactions shall be reported on Form 5:

(1) Small acquisitions as specified in § 240.16a–6(a) during the fiscal year, unless previously reported on Form 4;

(2) All transactions conducted during the fiscal year that were exempted by operation of any rule pursuant to section 16(b) of the Act, other than exercises and conversions of derivative securities exempted pursuant to § 240.16b–6(b), which shall be reported as specified in § 240.16a–4 (b) and (c); and

(3) Any occurrence or transaction during or prior to the fiscal year required to be reported on Form 3, 4, or 5 under section 16(a) of the Act that has not been reported as of the date by which the Form 5 is filed: *Provided, however,* That the required Form 3, 4, or 5 shall be appended to the Form 5.

§ 240.16a–4 Derivative securities.

(a) For purposes of section 16 of the Act, both derivative securities and the underlying securities to which they relate shall be deemed to be the same class of equity securities, except that they shall be reported separately.

(b) The exercise or conversion of a call equivalent position shall be reported on the next report, either Form 4 or 5, otherwise required after the date of exercise and shall be treated for reporting purposes as:

(1) A purchase of the underlying security; and

(2) A closing of the derivative security position.

(c) The exercise of a put equivalent position shall be reported on the next report, either Form 4 or 5, otherwise required after the date of exercise and shall be treated for reporting purposes as:

(1) A sale of the underlying security; and

(2) A closing of the derivative security position.

(d) If the next report otherwise required is due within fewer than ten days after an exercise or conversion, the exercise or conversion may be reported on the following required report.

Note: Under § 240.16b–6(b), a purchase or sale resulting from an exercise or conversion of a derivative security generally is exempt from section 16(b) of the Act.

§ 240.16a–5 Odd-lot dealers.

Securities purchased or sold by an odd-lot dealer in odd-lots as reasonably necessary to carry on odd-lot transactions, or in round lots to offset odd-lot transactions previously or simultaneously executed or reasonably anticipated in the usual course of business, shall be exempt from the provisions of section 16(a) of the Act with respect to participation by such odd-lot dealer in such transaction.

§ 240.16a–6 Small acquisitions.

(a) Any acquisition that does not exceed $10,000 in market value shall be reported on the next report otherwise required, either Form 4 or 5, subject to the following conditions:

(1) Total acquisitions of securities of the same class (including securities underlying derivative securities) within the prior six months do not exceed $10,000 in market value; and

(2) The person effecting the acquisition does not within six months thereafter effect any disposition, other than by a transaction exempt from section 16(b) of the Act.

(b) Should an acquisition no longer qualify for the reporting deferral in paragraph (a) of this section, all such acquisitions that have not yet been reported shall be reported on a Form 4 within ten days after the close of the calendar month in which the conditions of paragraph (a) of this section are no longer met.

(c) If the next report otherwise required is due within fewer than ten days after an acquisition subject to the Rule, the acquisition may be reported on the following required report.

§ 240.16a–7 Transactions effected in connection with a distribution.

(a) Any purchase and sale, or sale and purchase, of a security that is effected in connection with the distribution of a substantial block of securities shall be exempt from the provisions of section 16(a) of the Act, to the extent specified in this Rule, as not comprehended within the purposes of that section, subject to the following conditions:

(1) The person effecting the transaction is engaged in the business of distributing securities and is participating in good faith, in the ordinary course of such business, in the distribution of such block of securities; and

(2) The security involved in the transaction is:

(i) Part of such block of securities and is acquired by the person effecting the transaction, with a view to distribution thereof, from the issuer or other person on whose behalf such securities are being distributed or from a person who is participating in good faith in the distribution of such block of securities; or

(ii) A security purchased in good faith by or for the account of the person effecting the transaction for the purpose of stabilizing the market price of securities of the class being distributed or to cover an over-allotment or other short position created in connection with such distribution.

(b) Each person participating in the transaction must qualify on an individual basis for an exemption pursuant to this Rule.

§ 240.16a–8 Trusts.

(a) In the event that more than ten percent of any class of equity securities registered pursuant to Section 12 of the Act is held in a trust, both the trust and the trustee shall be subject to Section 16 of the Act. The trustee shall report on behalf of the trust. All transactions conducted by the trustee on its own behalf, rather than on behalf of the trust, shall be subject to Section 16 of the Act, and shall be separately reported by the trustee.

(b) In the event that a trustee is a person otherwise required to file reports with respect to securities of that issuer pursuant to § 240.16a–2, the trustee shall report separately on behalf of each trust in which the trustee exercises investment decision-making authority, and each such trust shall be subject to Section 16 of the Act: *Provided, however,* That this paragraph (b) shall not apply to an institution that in the ordinary course of business acts as trustee and is eligible to file a Schedule 13G (§ 240.13d–102) pursuant to § 240.13d–1(b)(1) with respect to that class of securities.

(c) In the event that either of the following conditions is met, beneficial ownership of the trust holdings will be attributable to a person specified in § 240.16a–2 instead of the trust:

(1) If a person specified in § 240.16a–2 is the trustee and at least one beneficiary of the trust is a member of the trustee's immediate family, all transactions of the trust will be attributed to the trustee and the trustee shall report all such transactions as

transactions of the trustee rather than as transactions of the trust.

(2) If a person specified in § 240.16a–2 is the beneficial owner of the securities as settlor of a trust and has the power to revoke the trust without obtaining the consent of the beneficiaries, all transactions of the trust will be attributed to the settlor and the settlor shall report the transactions of the trust as transactions of the settlor. These transactions need not be reported by the trustee.

(d) Trust transactions shall be attributable to the following parties, who will be required to report them, if subject to section 16(a) of the Act with respect to that issuer:

(1) Settlors as specified in paragraph (c)(2) of this section, and beneficiaries, in proportion to the beneficiary's pecuniary interest, unless the transaction was made without prior approval or direction of the settlor or the beneficiary; and

(2) The trust, unless the transaction was made at the direction of the settlor or beneficiary, or in a trust as specified in paragraph (c)(2) of this section.

(e) If a trust or other person becomes a reporting person pursuant to this Rule, it shall likewise be subject to Sections 16 (b) and (c) of the Act.

§ 240.16a–9 Exemptions under section 16(a).

Except as provided in § 240.16a–6, any transaction that has been or shall be exempted from the requirements of Section 16(a) of the Act shall, insofar as it is otherwise subject to the provisions of Section 16(b) of the Act, be likewise exempted from Section 16(b) of the Act.

§ 240.16a–10 Exemption for reporting persons of a Canadian issuer.

Securities transactions by reporting persons of a Canadian issuer with a class of equity securities registered under Section 12 of the Act shall be exempt from Section 16 of the Act.

5. Sections 240.16b–1 through 240.16b–10 are revised, § 240.16b–11 is removed, and the undesignated center heading preceding them is republished, as follows:

Exemption of Certain Transactions from Section 16(b)

§ 240.16b–1 Transactions approved by regulatory authority.

(a) Any purchase and sale, or sale and purchase, of a security shall be exempt from Section 16(b) of the Act, if the transaction is effected by an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) and both the purchase and sale of such security have been exempted from the provisions of Section 17(a) (15 U.S.C. 80a–17(a)) of that Act by rule or order of the Commission.

(b) Any purchase and sale, or sale and purchase, of a security shall be exempt from the provisions of Section 16(b) of the Act if:

(1) The person effecting such transaction is either a holding company registered under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) or a subsidiary thereof; and

(2) Both the purchase and the sale of such security have been approved or permitted by the Commission pursuant to the applicable provisions of that Act or the rules and regulations thereunder.

(c) Any acquisition of securities made in exchange for other securities shall be exempt from the provisions of Section 16(b) of the Act if:

(1) The securities are acquired from the issuer;

(2) The person acquiring the securities is subject to one or more of the provisions of Part I of the Interstate Commerce Act;

(3) The person acquiring the securities is:

(i) Subject to an order of, or has accepted a condition imposed by, the Interstate Commerce Commission in an approval of a unification, merger or acquisition of control pursuant to 49 U.S.C. 11343–11347, requiring such person to dispose of all securities of the same class as those exchanged for the securities acquired; and

(ii) The issuance of the securities acquired by such person has been approved by the Interstate Commerce Commission pursuant to 49 U.S.C. 11301; and

(4) The person acquiring voting equity securities:

(i) Has transferred all voting rights on an unrestricted basis to one or more banks; and

(ii) Such transfer remains in effect until such securities are disposed of by such person.

§ 240.16b–2 Subscription rights.

(a) Any sale of a subscription right to acquire any subject security of the same issuer shall be exempt from the provisions of Section 16(b) of the Act if:

(1) Such subscription right is acquired, directly or indirectly, from the issuer without the payment of consideration;

(2) Such subscription right by its terms expires within 45 days after the issuance thereof;

(3) Such subscription right by its terms is issued on a pro rata basis to all holders of the beneficiary security of the issuer; and

(4) A registration statement under the Securities Act, of 1933 (15 U.S.C. 77a *et. seq.*) is in effect as to each subject security, or the terms of any exemption from such registration have been met in respect to each subject security.

(b) When used within this Rule the following terms shall have the meaning indicated:

(1) The term "subscription right" means any warrant or certificate evidencing a right to subscribe to or otherwise acquire an equity security.

(2) The term "beneficiary security" means a security registered pursuant to section 12 of the Act, the holders of which were granted a subscription right.

(3) The term "subject security" means a security that is the subject of a subscription right.

(c) Notwithstanding anything contained herein to the contrary, if a person purchases subscription rights for cash or other consideration within six months of a sale by such person of subscription rights, such sale shall not be exempt.

§ 240.16b–3 Employee Benefit Plans.

(a) *Exempt Transactions.* The following transactions by a director or officer shall be exempt from section 16(b) of the Act if they occur pursuant to a plan that satisfies the conditions of paragraphs (b) and (c) of this section:

(1) The grant or acquisition of an option, warrant, right, or shares of stock;

(2) The expiration, cancellation, or surrender to the issuer of a stock option or stock appreciation right without value received; and

(3) The surrender or delivery to the issuer of shares of its stock as payment for the exercise of an option, warrant or right with respect to shares of the same class.

(b) *Disinterested Administration.* (1) The plan shall satisfy one of the following conditions:

(i) The decisions concerning the plan shall be made solely by a committee of two or more directors, all of whom are disinterested persons: *Provided, however,* That the directors need not be disinterested persons if directors are not permitted to participate in the plan; or

(ii) The plan by its terms:

(A) Determines which officers and directors may be awarded grants;

(B) Determines the timing of the grants for all participants; and

(C) Determines the amount of securities to be granted to individual participants (which shall be governed by a formula or standardized criteria for participants, such as earnings of the issuer, value of the securities, years of service, job classification, compensation

levels, etc.). The plan also must provide that no discretion concerning decisions regarding the plan shall be afforded to a person who is not a disinterested person; and that the requirements described in paragraph (b)(1)(ii) of this section shall not be amended more than once every six months, other than to comport with changes in the Internal Revenue Code or the rules thereunder.

(2) Compliance with this paragraph shall not be necessary with respect to any option or right granted, or other equity security acquired, prior to the date of the first registration of a class of equity security under section 12 of the Act.

(3) Plans that permit participation of persons other than those subject to section 16 of the Act need not comply with this paragraph as it relates to those other persons.

(c) *Definitions and Conditions.* Unless the context otherwise requires, all terms used in this Rule shall have the same meaning as in the Act, the General Rules and Regulations thereunder, or the Rules under section 16 of the Act. In addition, the following definitions and conditions apply:

(1) The term "plan" shall mean an option, bonus, appreciation, profit sharing, retirement, incentive, thrift, savings or similar plan that meets the following conditions with respect to participants subject to section 16 of the Act:

(i) The plan must be set forth in a written document describing the means or basis for determining the eligibility of individuals to participate and either the price at which the securities may be offered or the method by which the price or the amount of the award is to be determined;

(ii) The plan must provide, with respect to any equity security offered pursuant to the plan, that such equity security may not be sold for at least six months after acquisition, except in case of death or disability. The plan must provide further that a derivative security issued pursuant to the plan is not transferable other than by will or the laws of descent and distribution, that it is not exercisable for at least six months except in case of death or disability, and that it is exercisable during the plan participant's lifetime only by the participant or the participant's guardian or legal representative.

(2) The term "disinterested person" used in paragraph (b)(1) of this section shall mean an administrator of a plan who:

(i) During one year prior to the time of exercising discretion in administering the plan, has not been eligible for selection as a person to whom equity securities may be allocated or granted pursuant to the plan (or any other plan of the issuer or any of its affiliates) entitling the participants therein to acquire equity securities; and

(ii) Is not so eligible for one year after such exercise: *Provided, however,* That participation in a plan that satisfies the conditions of paragraph (b)(1)(ii) of this section does not disqualify a person from being disinterested if awards under the plan are not subject to the discretion of any person.

(d) *Cash Settlements of Stock Appreciation Rights.* Any transaction involving the exercise and cancellation of a stock appreciation right issued pursuant to a plan (whether or not the transaction also involves the related surrender and cancellation of a stock option), and the receipt of cash in complete or partial settlement of that right, shall be exempt from section 16(b) of the Act, as not comprehended within the purpose of that section, if the following conditions are met:

(1) *Information About the Issuer.*

(i) The issuer of the stock appreciation right has been subject to the reporting requirements of section 13(a) of the Act for at least a year prior to the transaction and has filed all reports and statements required to be filed pursuant to that section during that year.

(ii) The issuer of the stock appreciation right on a regular basis releases for publication quarterly and annual summary statements of sales and earnings. This condition shall be deemed satisfied if the specified financial data appears:

(A) on a wire service,

(B) in financial news service,

(C) in a newspaper of general circulation, or

(D) is otherwise made publicly available.

(2) *Administration of the Plan.* (i) The plan shall be administered in the manner specified in paragraph (b)(1) of this section.

(ii) The board of directors of the issuer or committee shall have sole discretion either:

(A) To determine the form in which payment of the right will be made (i.e., cash, securities, or any combination thereof), or

(B) To approve or disapprove the election of the participant to receive cash in full or partial settlement of the right. Such approval or disapproval may be given at any time after the election to which it relates.

(3) *Timing.* Any election by the participant to receive cash in full or partial settlement of the stock appreciation right, as well as any exercise by the participant of the stock appreciation right for such cash, shall be made during the period beginning on the third business day following the date of release of the financial data specified in paragraph (d)(1)(ii) of this section and ending on the twelfth business day following such date. This paragraph (d)(3) of this section, however, shall not apply to any exercise by the participant of a stock appreciation right for cash where the date of exercise is automatic or fixed in advance under the plan and is outside the control of the participant.

(e) *Intra-plan Transfers.* Both the election and resulting transactions within a plan shall be exempt from section 16(b) of the Act if they occur pursuant to a plan that satisfies the conditions of paragraph (c) of this section and one of the following conditions:

(1) The participant makes an irrevocable investment election at least six months in advance of the effective date of the transaction;

(2) The participant makes an investment election on a date specified by the plan at least six months after the previous investment election date specified by the plan;

(3) The participant makes an election to defer a distribution of securities or cash incident to the termination of employment or total and permanent disability, provided the securities are delivered six months or later after the date the election to defer is made; or

(4) The participant makes an election to participate or not participate in an ongoing securities acquisition program within a pension or retirement plan where:

(i) The plan is open to all employees generally;

(ii) Participants are not entitled to receive a distribution until their death, retirement, or termination of employment unless significant penalties are imposed; and

(iii) If participants elect to cease participation, they may not elect to participate again for at least six months.

Note. Investment elections need not be reported. Resulting intra-plan transactions shall be reported on Form 5.

(f) *Distributions.* Distributions of equity securities from a plan satisfying the conditions of paragraphs (b) and (c) of this section to a participant shall be exempt from section 16(b) of the Act if the securities so distributed had been acquired by the plan for the benefit of the participant, and the acquisition by the plan had been disclosed previously by the participant pursuant to section 16(a) of the Act.

§ 240.16b-4 Issuer redemptions.

An officer's or director's acquisition of equity securities shall be exempt, provided the securities are acquired through an issuer redemption transaction where:

(a) The securities redeemed ("surrendered securities"):

(1) Represent equity securities of an issuer whose assets consist entirely of cash, government securities, and equity securities in the issuer redeeming the surrendered securities;

(2) Have a value equivalent to the equity securities acquired in the redemption; and

(3) Conferred upon the holder the right to receive the acquired equity securities without the payment of any consideration other than the security redeemed;

(b) The officer or director has not acquired or disposed of any surrendered securities during any six month period before or after the redemption transaction;

(c) The security acquired in the redemption transaction is not a derivative security; and

(d) The issuer of the securities acquired in the redemption has taken appropriate action to establish the relationship between its equity securities and the surrendered securities and to establish the issuer's right to redeem.

§ 240.16b-5 Bona fide gifts and inheritance.

Both acquisitions and dispositions of equity securities shall be exempt from the operation of section 16(b) of the Act if they are:

(a) Bona fide gifts; or

(b) Transfers of securities by will or the laws of descent and distribution.

§ 240.16b-6 Derivative securities.

(a) The establishment of or increase in a call equivalent position or liquidation of or decrease in a put equivalent position shall be deemed a purchase of the underlying security for purposes of section 16(b) of the Act, and the establishment of or increase in a put equivalent position or liquidation of or decrease in a call equivalent position shall be deemed a sale of the underlying securities for purposes of section 16(b) of the Act.

(b) The closing of a derivative security position as a result of its exercise or conversion shall be exempt from the operation of section 16(b) of the Act, and the acquisition of underlying securities at a fixed exercise price due to the exercise or conversion of a call equivalent position or the disposition of underlying securities due to the exercise of a put equivalent position shall be exempt from the operation of section 16(b) of the Act: *Provided, however,* That the acquisition of underlying securities from the exercise of an out-of-the-money option, warrant, or right shall not be exempt unless the exercise is necessary to comport with the serial exercise provisions of the Internal Revenue Code of 1986 (26 U.S.C. 422A).

(c) The disposition of a security received upon the exercise of a derivative security awarded pursuant to a plan satisfying § 240.26b-3(b) shall be exempt from the provisions of section 16(b) if the disposition is pursuant to a plan or agreement for merger or consolidation, or reclassification of the issuer's securities, or for the exchange of its securities for the securities of another person that has acquired its assets, or that is in control, as defined in section 368(c) of the Internal Revenue Code of 1986, of a person that has acquired its assets, where the terms of such plan or agreement are binding upon all security holders of the issuer except to the extent that dissenting security holders may be entitled, under statutory provisions or provisions contained in the certificate of incorporation, to receive the appraised or fair value of their holdings.

(d) In determining the short-swing profit recoverable pursuant to Section 16(b) of the Act from transactions involving the purchase and sale or sale and purchase of derivative and other securities, the following rules apply:

(1) Short-swing profits in transactions involving the purchase and sale or sale and purchase of derivative securities that have identical characteristics (*e.g.* purchases and sales of call options of the same strike price and expiration date, or purchases and sales of the same series of convertible debentures) shall be measured by the actual prices paid or received in the short-swing transactions.

(2) Short-swing profits in transactions involving the purchase and sale or sale and purchase of derivative securities having different characteristics (*e.g.,* the purchase of a call option and the sale of a convertible debenture) or derivative securities and underlying securities shall not exceed the difference in price of the underlying security on the date of purchase or sale and the date of sale or purchase. Such profits may be measured by calculating the short-swing profits that would have been realized had the subject transactions involved purchases and sales solely of the derivative security that was purchased or solely of the derivative security that was sold, valued as of the time of the matching purchase or sale, and calculated for the lesser of the number of ultimate underlying securities covered by the derivative security actually purchased or sold.

(e) Upon expiration of an option within six months of the writing of the option, any profit derived from writing the option shall be recoverable under Section 16(b) of the Act. The profit shall not exceed the premium received for writing the option. The disposition of a long derivative security position, as a result of expiration, shall be exempt from Section 16(b) of the Act where no value is received from the expiration.

§ 240.16b-7 Mergers, Reclassifications, and Consolidations.

(a) The following transactions shall be exempt from the provisions of Section 16(b):

(1) The acquisition or disposition of a security of a company pursuant to a merger or consolidation in exchange for a security of a company which, prior to said merger or consolidation, owned 85 percent or more of the equity securities of all other companies involved in the merger (or, in the case of a consolidation, owned 85 percent of the resulting company); or

(2) The acquisition or disposition of a security of a company, pursuant to a merger or consolidation, in exchange for a security of a company which, prior to said merger or consolidation, held over 85 percent of the combined assets of all the companies involved in the merger or consolidation, computed according to their book values prior to the merger or consolidation as determined by reference to their most recent available financial statements for a 12 month period prior to the merger or consolidation.

(b) A merger within the meaning of this Rule shall include the sale or purchase of substantially all the assets of one company by another in exchange for equity securities which are then distributed to the security holders of the company that sold its assets.

(c) Notwithstanding the foregoing, if an officer, director or beneficial owner of more than ten percent shall make any purchase of a security in any company involved in the merger or consolidation and any sale of a security in any other company involved in the merger or consolidation within any period of less than six months during which the merger or consolidation took place, the exemption provided by this Rule shall be unavailable.

§ 240.16b-8 Voting trusts.

Any acquisition or disposition of an equity security or certificate representing equity securities involved in the deposit or withdrawal from a

voting trust or deposit agreement shall be exempt from Section 16(b) of the Act if substantially all of the assets held under the voting trust or deposit agreement immediately after the deposit or immediately prior to the withdrawal consisted of equity securities of the same class as the security deposited or withdrawn: *Provided, however,* That this exemption shall not apply if within six months of the deposit or withdrawal there is a purchase or sale of an equity security of the class deposited and a sale or purchase of any certificate representing such equity security (other than the actual deposit or withdrawal).

§ 240.16b-9 Dividend or interest reinvestment plans.

Any acquisition of securities resulting from the reinvestment of dividends or interest shall be exempt from Section 16(b) of the Act if made pursuant to a plan, available on the same terms to all holders of that class of securities, providing for the regular reinvestment of such dividends or interest.

§ 240.16b-10 Stock splits and stock dividends.

The following transactions are exempt from Section 16(b) of the Act:

(a) Acquisition of equity securities as a result of a stock split of all securities of the same class; and

(b) Acquisition of equity securities as a result of a stock dividend applied pro rata to all holders of the securities of the same class.

6. Sections 240.16c-1 through 240.16c-3 are revised and §§ 240.16c-4 and 240.16d-1 and the undesignated center heading preceding § 240.16d-1 are added, to read as follows:

Exemption of Certain Transactions from Section 16(c)

§ 240.16c-1 Brokers.

Any transaction shall be exempt from Section 16(c) of the Act to the extent necessary to render lawful the execution by a broker of an order for an account in which the broker has no direct or indirect interest.

§ 240.16c-2 Transactions effected in connection with a distribution.

Any transaction shall be exempt from Section 16(c) of the Act to the extent necessary to render lawful any sale made by or on behalf of a dealer in connection with a distribution of a substantial block of securities, where the sale is represented by an over-allotment in which the dealer is participating as a member of an underwriting group, or the dealer or a person acting on his behalf intends in good faith to offset such sale with a security to be acquired by or on behalf of the dealer as a participant in an underwriting, selling, or soliciting-dealer group of which the dealer is a member at the time of the sale, whether or not the security to be acquired is subject to a prior offering to existing security holders or some other class of persons.

§ 240.16c-3 Exemption of sales of securities to be acquired.

(a) Whenever any person is entitled, incident to ownership of an issued security and without the payment of consideration, to receive another security "when issued" or "when distributed," the sale of the security to be acquired shall be exempt from the operation of Section 16(c), *Provided,* That:

(1) The sale is made subject to the same conditions as those attaching to the right of acquisition;

(2) Such person exercises reasonable diligence to deliver such security to the purchaser promptly after the right of acquisition matures; and

(3) Such person reports the sale on the appropriate form for reporting transactions by persons subject to Section 16(a).

(b) This Rule shall not exempt transactions involving both a sale of the issued security and a sale of a security "when issued" or "when distributed" if the combined transactions result in a sale of more securities than the aggregate of issued securities owned by the seller plus those to be received for the other security "when issued" or "when distributed."

§ 240.16c-4 Derivative securities.

Establishing or increasing a put equivalent position shall be exempt from Section 16(c) of the Act, so long as the securities underlying the put equivalent position do not exceed the amount of underlying securities otherwise owned.

Exemption for Market Makers

§ 240.16d-1 Market maker reporting.

Transactions exempt pursuant to Section 16(d) of the Act need not be reported on Form 3, 4 or 5.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 249 continues to read as follows:

Authority: Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.* * * *

2. By revising Item 10 of Form 10-K (§ 249.310) as set forth below:

Note.—The text of Form 10-K does not and this amendment will not appear in the Code of Federal Regulations.

§ 249.310 Form 10-K, annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

Part III

* * * * *

Item 10. Directors and Executive Officers of the Registrant.

Furnish the information required by Items 401 and 405 of Regulation S-K. (§ 229.401 and § 229.405 of this chapter).

* * * * *

3. By amending the description of Form 3 in § 249.103 by revising its first and eighth sentences to read as follows:

§ 249.103. Form 3, initial statement of beneficial ownership of securities.

This form shall be filed pursuant to Rule 16a-3 (§ 240.16a-3 of this chapter) for initial statements of beneficial ownership of securities required to be filed pursuant to Section 16(a) of the Securities Exchange Act of 1934. * * * Social security account numbers, if furnished, will assist the Commission in differentiating among officers, directors and security holders whose own or issuer names are similar. * * *

4. By amending Form 3 (§ 249.103) to read as follows:

Note—The text of Form 3 does not and this amendment will not appear in the Code of Federal Regulations.

OMB Approval

OMB Number: 3235-0104
Estimated Burden Hours: 0.5
Expires: Pending Approval

Form 3—Initial Statement of Beneficial Ownership of Securities

Special Instructions for Completing Form 3

Under Sections 16(a) and 23(a) of the Securities Exchange Act of 1934; Sections 17(a) and 30(a) of the Public Utility Holding Company Act of 1935; and Sections 30(f) and 38 of the Investment Company Act of 1940, and the rules and regulations thereunder, the Commission is authorized to solicit the information required by this form from officers, directors and certain security holders of registered issuers.

Disclosure of the information specified in this form is mandatory, except for social security account numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of officers, directors and beneficial owners of registered issuers. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation

involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social security account numbers, if furnished, will assist the Commission in differentiating among officers, directors and security holders whose own or issuer names are similar.

Failure to disclose the information required by this form, except for social security account numbers, may result in civil or criminal action against the persons involved for violation of provisions of the Federal securities laws and rules promulgated thereunder.

General Instructions

1. *When and Where Statements are to Be Filed.*

(a) Within 10 days after the occurrence of any event that requires the filing of this form, other than the registration of securities under section 12 of the Act, three copies, at least one of which shall be manually signed, shall be filed with the Securities and Exchange Commission, 450 5th Street N.W., Washington, DC 20549. In the case of Section 12 registration, the form must be filed no later than the effective date of the registration statement. The events that require the filing of a statement on this form are set forth in Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 and Section 30(f) of the Investment Company Act of 1940 and the rules thereunder. The filing date is the date of receipt at the Commission. At the same time, one duplicate original of the statement shall be filed with each exchange on which any class of equity securities of the issuer is registered, unless the issuer has, in accordance with Rule 16a–3(c), designated a single exchange to receive such statements. One duplicate original also shall be sent to the issuer pursuant to Rule 16a–3(e).

(b) Acknowledgment of receipt of the statement by the Commission may be obtained by enclosing a self-addressed, stamped post card identifying the statement filed.

2. *Separate Statement for Each Issuer—Exception.*

A separate statement shall be filed with respect to the securities of each issuer, except that a single statement shall be filed with respect to the securities of a registered public utility holding company and of all of its subsidiary companies.

3. *Classes of Securities to Be Reported.*

(a) Information must be furnished as required by this form with respect to all classes of equity securities of the issuer, even though one or more of such classes may not be registered pursuant to section 12 of the Act.

(b) Information concerning derivative securities as defined by Rule 16a–1(c) (*e.g.*, options, warrants, convertible securities) must be reported on Table II.

(c) Persons reporting pursuant to Section 17(a) of the Public Utility Holding Company Act of 1935 shall include information as to their beneficial ownership of all classes of securities of the registered holding company and of all of its subsidiary companies.

(d) Persons reporting pursuant to Section 30(f) of the Investment Company Act of 1940 shall include information as to their beneficial ownership of all classes of securities of the registered closed-end investment company (other than "short-term paper" as defined in Section 2(a)(38) of the Investment Company Act).

4. *Statement Required Although No Securities are Owned.*

If any person required to file a statement on this form does not own any securities required to be reported, a statement shall be made on this form to report that fact.

5. *Reporting of Certain Holdings.*

(a) When two or more securities are owned as a unit and both are required to be reported, report each security separately and describe the unit relationship in the space provided for explanation on the form. If one or more of the securities comprising the unit is not required to be reported, the other security or securities shall be reported separately and the unit relationship described as indicated above.

(b) Securities owned indirectly shall be reported on separate lines from those owned directly and also from those owned through a different type of indirect ownership.

(c) In reporting the ownership of common stock that is convertible into another type of common stock, the stock should be listed on Table I with the number of shares or units subject to the conversion privilege and the conversion price per share or unit set forth in the explanation space. Other convertible securities shall be reported as derivative securities on Table II.

6. *Title of Securities.*

The title of securities in Column 1 of Table I and Columns 1 and 2 of Table II shall be stated as specifically as possible; for example, "Common Stock," "Class A Common Stock," "12% Convertible Preferred Stock," etc. Include the name of the issuer of the securities if it is a public utility holding company or a subsidiary thereof.

7. *Statement of Amounts of Securities.*

(a) In stating amounts of securities in Column 2 of Table I and Column 3 of Table II, give the number of securities, or if debt is required to be reported, give the face amount of the debt securities.

(b) Report only those securities of which the person is a beneficial owner as defined by Rule 16a–1(a)(2) (i.e., in which a pecuniary interest is present).

(c) In stating amounts of securities beneficially owned through a partnership, corporation, trust, or other entity, the reporting person shall indicate only the amount of securities representing the proportionate interest of the person in the transaction conducted by the partnership, corporation, trust, or other entity. Alternatively, at the option of the reporting person, the entire amount of the entity's interest may be reported. See Instruction 8(b) below.

8. *Type of Ownership of Securities.*

(a) The following securities shall be reported as owned directly: securities held in the name of the reporting person or in the name of a bank, broker, or nominee for the account of the reporting person; and securities held in joint tenancy, tenancy in common, tenancy by the entirety, or as community property.

(b) Securities that are beneficially owned, but that are not owned directly, *e.g.*, through a member of the reporting person's "immediate family" as defined in Rule 16a–1(e), shall be reported as indirectly owned; "beneficial owner" is defined in Rule 16a–1(a)(2). Securities holdings attributed to a reporting person as a result of the person's interest in a partnership, corporation, trust, or other entity also are considered to be owned indirectly.

(c) Beneficial ownership of the securities reported on this form may be disclaimed unless mandated by a rule under Section 16(a) of the Securities Exchange Act. See Rule 16a–1(a)(4).

9. *Type of Derivative Security.*

The type of derivative security owned shall be reported in Column 1 of Table II. If appropriate, state whether it represents a right to buy, a right to sell, an obligation to buy, or an obligation to sell, the underlying securities.

10. *Inclusion of Additional Information.*

A statement may include any additional information or explanation deemed relevant by the reporting person.

11. *Signature.*

(a) If the statement is filed for an individual, it shall be signed by the individual or specifically on behalf of the individual by a person authorized to sign for the individual. If signed on behalf of the individual by another person, the authority of such person to sign the statement shall be confirmed to the Commission in writing in an attachment to the statement or as soon as practicable as an amendment by the individual for whom the statement is filed, unless such a confirmation still in effect is on file with the Commission.

(b) If the statement is filed for a corporation, partnership, trust or other entity, the name of the organization shall appear over the signature of the officer or other person authorized to sign the statement, and the capacity in which the individual signed set forth.

BILLING CODE 8010-01-M

OMB APPROVAL	
OMB Number:	3235-0104
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Estimated average burden hours per response.....	00.5

U.S. Securities and Exchange Commission
Washington, D.C.

FORM 3

INITIAL STATEMENT OF BENEFICIAL OWNERSHIP OF SECURITIES
Filed Pursuant to Section 16(a) of the Securities Exchange Act of 1934,
Section 17(a) of the Public Utility Holding Company Act of 1935,
or Section 30(f) of the Investment Company Act of 1940

(Please Print or Type)

1. Reporting Person: Name (Last, First, Middle)	Address	City	State	Zip Code
2. Issuer: Name	Address	City	State	Zip Code
3. Issuer State of Incorporation or Organization	4. IRS or Soc. Sec. Identifying Number of Reporting Person (Optional)	5. Relationship(s) of Reporting Person to Issuer (Check all which apply) /_/ Director /_/ Officer /_/ 10% Owner /_/ Other (Specify) _____		

6. Title of Officer/Director (e.g., President and Director," "Chief Financial Officer," etc.)	7. Date of Event Requiring Filing of this Statement			8. If an Amendment, give date of Statement to be Amended		
	Month	Day	Year	Month	Day	Year

Table I - Securities Beneficially Owned
Furnish the information required by the following table as to securities beneficially owned directly or indirectly by the reporting person. (Instructions 3, 4 and 5) Derivative securities of the issuer shall be reported on Table II.

1. Title of Securities Owned (Report different types of ownership on separate lines) (Instructions 5 and 6)	2. Amount of Securities Owned (Instruction 7)	3. Type of Ownership (D) - Direct (I) - Indirect (Instruction 8)	4. Nature of Indirect Ownership (e.g., "By Spouse," "By X Trust," "By Y Corporation," "By Self as Trustee for Children," etc.) (Instruction 8)

FORM 3 (continued)

Table II - Derivative Securities (e.g., options, warrants, SARs, convertible securities) Beneficially Owned
Furnish the information required by the following table as to all derivative securities of the issuer owned by the reporting person. (The term "derivative securities" is defined in Rule 16a-1(c).)
(Instructions 3 and 5)

1. Title and Type of Derivative Security (Report different types of ownership on separate lines) (Instructions 5, 6, 8 and 9)	2. Title of Securities Subject to Derivative Security (Instructions 5 and 6)	3. Amount of Securities Subject to Derivative Security (Instruction 7)	4. Exercise or Conversion Price of Derivative Security	5. Date Derivative Security Becomes Exercisable if not presently exercisable			6. Date of Expiration of Derivative Security			7. Type of Ownership (D) - Direct (I) - Indirect (Instruction 8)	8. Nature of Indirect Ownership (e.g., "By Spouse, "By X Trust," "By Y Corporation," "By Self as Trustee Children," etc.) (Instruction 8)
				Month	Day	Year	Month	Day	Year		

Explanation of responses in tables:

Date of Statement

Signature of Reporting Person (Instruction 11)

Note: If the space provided in any table is insufficient, use a continuation sheet which identifies the table and columns to which it relates.

BILLING CODE 8010-01-C

5. By amending the description of Form 4 in § 249.104) by revising its first, eighth and ninth sentences as set forth below.

§ 249.104 Form 4. Statement of changes in beneficial ownership of securities.

This form shall be filed pursuant to Rule 16a–3 (§ 240.16a–3 of this chapter) for statements of changes in beneficial ownership of securities required to be filed pursuant to Section 16(a) of the Securities Exchange Act of 1934. * * * Social security account numbers, if furnished, will assist the Commission in differentiating among officers, directors and security holders whose own or issuer names are similar. Failure to disclose the information requested by this form, except for social security account numbers, may result in civil or criminal action against the persons involved for violations of provisions of the Federal securities laws and rules promulgated thereunder.

6. By revising Form 4 (§ 249.104) to read as follows:

Note.—The text of Form 4 does not and this amendment will not appear in the Code of Federal Regulations.

OMB Approval

OMB Number:
Estimated Burden Hours: 0.5
Expires: Pending Approval

Form 4—Statement of Changes in Beneficial Ownership of Securities

Special Instructions for Completing Form 4

Under Sections 16(a) and 23(a) of the Securities Exchange Act of 1934; Sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935; and Sections 30(f) and 38 of the Investment Company Act of 1940, and the rules and regulations thereunder, the Commission is authorized to solicit the information required by this form from officers, directors and certain security holders of registered issuers.

Disclosure of the information specified in this form is mandatory, except for social security account numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of officers, directors and beneficial owners of registered issuers. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social security account numbers, if furnished, will assist the Commission in differentiating among officers, directors and security holders whose own or issuer names are similar.

Failure to disclose the information required by this form, except for social security account numbers, may result in civil or criminal action against the persons involved for violation of provisions of the Federal securities laws and rules promulgated thereunder.

General Instructions

1. *When and Where Statements Are To Be Filed.*

(a) On or before the 10th day after the end of the month in which any change in beneficial ownership has occurred, three copies of the statement on this form, at least one of which is manually signed, shall be filed with the Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549. The filing date is the date of receipt at the Commission. At the same time, one duplicate original of the statement shall be filed with each exchange on which any class of equity securities of the company is registered, unless the issuer has, in accordance with Rule 16a–3(c), designated a single exchange to receive such statements. One duplicate original also shall be sent to the issuer pursuant to Rule 16a–3(e).

(b) Acknowledgment of receipt of the statement by the Commission may be obtained by enclosing a self-addressed, stamped post card identifying the statement filed.

2. *Separate Statement for Each Issuer—Exception.*

A separate statement shall be filed with respect to the securities of each issuer, except that a single statement shall be filed with respect to the securities of a registered public utility holding company and all of its subsidiary companies.

3. *Classes of Securities To Be Reported.*

(a) Information must be furnished as required by this form with regard to all classes of equity securities of the issuer, even though one or more of such classes may not be registered pursuant to Section 12 of the Act.

(b) Information concerning derivative securities as defined by Rule 16a–1(c) (*e.g.*, options, warrants, convertible securities) must be reported on Table II.

(c) Persons reporting pursuant to Section 17(a) of the Public Utility Holding Company Act of 1935 shall include information required to be reported as to certain changes in the amount of securities beneficially owned, changes in the nature of beneficial ownership and the amount of their beneficial ownership at the end of the month of all classes of securities of the registered holding company and all of its subsidiary companies.

(d) Persons reporting pursuant to Section 30(f) of the Investment Company Act of 1940 shall include information required to be reported as to certain changes in the amount of securities beneficially owned, changes in the nature of beneficial ownership and the amount of their beneficial ownership at the end of the month of all classes of securities of the registered closed-end investment company (other than "short-term paper" as defined in Section 2(a)(38) of the Act).

4. *Transactions To Be Reported.*

(a) All transactions that result in a change of beneficial ownership in the issuer's securities shall be reported on this form, except those exempted transactions excluded from the reporting and liability provisions of Section 16 by operation of Rule 16a–5, 16a–7, 16a–8, or 16a–10 and the transactions listed in paragraph (b) below.

(b) The following transactions that result in a change of beneficial ownership shall be reported on Form 5 rather than this form: small acquisitions that are to be reported on a deferred basis pursuant to rule 16a–6(a) and transactions conducted during the issuer's fiscal year that were exempt from the provisions of Section 16(b) of the Exchange Act by operation of any rule pursuant to such section, except that if a Form 4 otherwise is required to be filed and prior to its filing there has been an exercise or conversion of a call equivalent position or a put equivalent position also exempt, it shall be reported on the Form 4 rather than on a Form 5 pursuant to Rule 16a–4.

(c) Every transaction shall be reported even though acquisitions and dispositions during the month are equal, or the change involves only the nature of ownership, such as a change from indirect ownership through a trust or corporation to direct ownership by the reporting person.

5. *Reporting of Certain Transactions and Holdings.*

(a) When a transaction relates to the acquisition or disposition of two or more securities as a unit or such a unit is beneficially owned at the end of a month and both are required to be reported, report each security separately and describe the unit relationship in the space provided for explanation. If one or more of the securities comprising the unit is not required to be reported, the other security or securities shall be reported separately and the unit relationship described as indicated above.

(b) Securities owned indirectly shall be reported on separate lines from those owned directly and also from those owned through a different type of indirect ownership.

(c) In reporting the acquisition, disposition or end of a month beneficial ownership of one class of common stock that is convertible into another type of common stock, the transaction should be listed on Table I with the number of shares or units subject to the conversion privilege and the conversion price per share or unit set forth in the explanation space. Other convertible securities shall be reported as derivative securities on Table II.

6. *Title of Securities.*

The title of securities in Column 1 of Table I and Columns 1 and 3 of Table II shall be stated as specifically as possible; for example, "Common stock," "Class A stock," "12% Convertible Preferred Stock," etc. Include the name of the issuer of the securities if it is a public utility holding company or a subsidiary thereof.

7. *Statement of Amounts of Securities.*

(a) In stating amounts of securities in Columns 3, 4 and 7 of Table I and Columns 4, 5, 6, 9 and 10 of Table II, give the number of

securities, or if debt is required to be reported, give the face amount of the debt securities.

(b) Report only those equity securities of which the person is a beneficial owner as defined by Rule 16a–1(a)(2) (i.e., in which a pecuniary interest is present).

(c) In stating amounts of securities beneficially owned through a partnership, corporation, trust, or other entity, the reporting person shall indicate only the amount of securities representing the proportionate interest of the person in the transaction conducted by the partnership, corporation, trust, or other entity. Alternatively, at the option of the reporting person, the entire amount of the entity's interest may be reported. See Instruction 9(b) below.

8. *Purchase or Sale Price of Securities.*

(a) If any transaction reported involved a purchase or sale of securities for cash or obligation to pay cash, state in Column 6 of Table I or Column 8 of Table II the purchase price per share or unit, exclusive of brokerage commissions or other costs of execution. If the transaction was only partly for cash and partly for other consideration, state the amount of cash per share or unit and the nature of the other consideration. If the transaction did not involve cash, state the nature of the consideration given or received.

(b) When two or more securities are purchased or sold as a unit, the purchase or sale price of the unit shall be stated in Column 6 of Table I or Column 8 of Table II with respect to one of the securities and cross-referenced with respect to the other security or securities.

9. *Type of Ownership of Securities.*

(a) The following securities shall be reported as owned directly: securities held in the name of the reporting person or in the name of a bank, broker or nominee for the account of the reporting person; and securities held in joint tenancy, tenancy in common, tenancy by the entirety or as community property.

(b) Securities that are beneficially owned, but that are not owned directly, *e.g,* through a member of the reporting person's "immediate family" as that term is defined in Rule l6a 1(e), shall be reported as indirectly owned; "beneficial owner" is defined in Rule 16a—1(a)(2). Securities holdings attributed to a reporting person as a result of the interest of the person in a partnership, corporation, trust, or other entity also are considered to be owned indirectly.

(c) Beneficial ownership of the securit=es reported on this form may be disclaimed unless mandated by a rule under Section 16(a) of the Securities Exchange Act of 1934. See Rule 16a–1(a)(4).

10. *Type of Derivative Security.*

The type of derivative security owned shall be reported in Column 1 of Table II. If appropriate, state whether it represents a right to buy, a right to sell, an obligation to buy, or an obligation to sell, the underlying securities.

11. *Beneficial Ownership at End of Month.*

Beneficial ownership at the end of the month covered by the statement (Column 7 of Table I and Column 9 of Table II) shall be shown for all equity securities required to be reported even though there has been no change during the month in the aggregate ownership of securities of one or more classes or accounts. For example, a person reporting a transaction relating to common stock shall, in addition to providing all the information in Table I relating to such transaction, report the amount of preferred stock, convertible debentures, etc., owned at the end of the month. See Instruction 4 above as to when reports on this form are required.

12. *Inclusion of Additional Information.*

A statement may include any additional information or explanation deemed relevant by the person filing the statement.

13. *Signature."*

(a) If the statement is filed for an individual, it shall be signed by the individual or specifically on behalf of the individual by a person authorized to sign for the individual. If signed on behalf of the individual by another person, the authority of such person to sign the statement shall be confirmed to the Commission in writing in an attachment to the statement or as soon as practicable in an amendment by the individual for whom the statement is filed, unless such a confirmation still in effect is on file with the Commission.

(b) If the statement is filed for a corporation, partnership, trust, etc., the name of the organization shall appear over the signature of the officer or other person authorized to sign the statement, and the capacity in which the individual signed set forth.

BILLING CODE 8010–01–M

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OMB Number:	3235-0287
Expires:	Pending Approval
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U.S. Securities and Exchange Commission
Washington, D.C. 20549

FORM 4

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES
Filed Pursuant to Section 16(a) of the Securities Exchange Act of 1934,
Section 17(a) of the Public Utility Holding Company Act of 1935,
or Section 30(f) of the Investment Company Act of 1940

(Please Print or Type)

1. Reporting Person: Name (Last, First, Middle)	Address	City	State	Zip Code
2. Issuer: Name	Address	City	State	Zip Code
3. Issuer State of Incorporation or Organization	4. IRS or Soc. Sec. Identifying Number of Reporting Person (Optional)	5. Relationship(s) of Reporting Person to Company (Check all which apply) /_/ Director /_/ Officer /_/ 10% Owner /_/ Other (Specify) _____		

6. Title of Officer/Director (e.g., President and Director," "Chief Financial Officer," etc.)	7. Statement for Calendar Month		8. Date of Last Previous Statement			9. If an Amendment, give date of Statement to be Amended		
	Month	Year	Month	Day	Year	Month	Day	Year

Table I - Securities Held, Bought, Sold, Or Otherwise Acquired or Disposed of
Furnish the information required to be reported on this form as to securities of the issuer bought or sold or otherwise acquired or disposed of by the reporting person during, or beneficially owned at the end of the month for which this statement is filed. (Instructions 4 and 5)
Transactions involving derivative securities of the issuer shall be reported on Table II.

1. Title of Securities (Report Different Types of Ownership on Separate Lines) (Instrs. 2 and 6)	2. Date of Transaction (Give Trade Date of Market Transactions) (Instruction 4)			3. Amount of Securities Acquired (Instruction 7)	4. Amount of Securities Disposed of (Instruction 7)	5. Code for Character of Transaction Reported (See Codes Below)	6. Purchase or Sale Price Per Share or Unit (Instruction 8)	7. Amount of Securities Owned at End of Month (Instructions 7 and 11)	8. Type of Ownership (D) - Direct (I) - Indirect (Instruction 9)	9. Nature of Indirect Ownership (e.g., "By Spouse," "By X Trust," "By Y Corporation," "By Self as Trustee for Children," etc.)
	Month	Day	Year							

FORM 4 (continued)

Table II - Derivative Securities (e.g., options, warrants, SARs, convertible securities) Held, Bought, Sold or Otherwise Acquired or Disposed of
Furnish the information required to be reported on this form as to derivative securities of the issuer bought or sold or otherwise acquired or disposed of by the reporting person during, or beneficially owned at the end of the month for which this statement is filed (the term "derivative securities" is defined in Rule 16a-1(c)).
(Instructions 4 and 5)

1. Title and Type of of Derivative Security (Report Different Types of Ownership on Separate Lines) (Instrs. 6 and 10)	2. Date of Transaction (Give Trade Date of Market Transactions)			3. Title of Securities Subject to Derivative Security	4. Amount of Derivative Securities Acquired	5 Amount of Derivative Securities Disposed of	6. Amount of Securities Subject to Derivative Securities Acquired or Disposed of	7. Code for Character of Transaction, Reported	8. Purchase or Sale Price of Derivative Security
	Mo.	Day	Yr.	(Instr. 6)	(Instr. 7)	(Instr. 7)	(Instr. 7)	(See codes below)	(Instr. 8)

Table II is continued on next page

FORM 4 (continued)

Table II - Derivative Securities (e.g., options, warrants, SARs, convertible securities) Held, Bought, Sold or Otherwise Acquired or Disposed of (continued)

9. Amount of Derivative Securities Owned at End of Month (Instrs. 7 and 11)	10. Amount of Securities Subject to Derivative Securities Owned at End of Month (Instr. 7)	11. Purchase or Sale Price of Securities Subject to Derivative Security	12. Date Derivative Security Becomes Exercisable if not Presently Exercisable			13. Date of Expiration of Derivative Security			14. Type of Ownership (D) - Direct (I) - Indirect (Instr. 9)	15. Nature of Indirect Ownership (e.g., "By Spouse," "By X Trust," "By Y Corporation," By Self as Trustee for Children," etc.)
			Mo.	Day	Yr.	Mo.	Day	Yr		

Form 4 is continued on next page

FORM 4 (continued)

Codes for Character of Transaction (Enter in Column 5 of Table I and Column 7 of Table II)

[P] - Open Market Purchase
[S] - Open Market Sale
[J] - Private Purchase
[K] - Private Sale
[X] - Acquired by Exercise of In-the-Money or At-the-Money Derivative Security/Rule 16b-6(b)
[Q] - Disposed of by Exercise of In-the-Money or At-the-Money Derivative Security/Rule 16b-6(b)
[O] - Acquired by Exercise of Out-of-the-Money Derivative Security
[OO] - Disposed of by Exercise of Out-of-the-Money Derivative Security
[M] - Acquired by Conversion of Derivative Security/Rule 16b-6(b)
[N] - Disposed of by Conversion of Derivative Security/Rule 16b-6(b)
[D] - Expiration of Derivative Security (if short position)
[T] - Other Acquisition (Specify)
[U] - Other Disposition (specify)

Explanation of responses in tables:

Date of Statement

Signature of Reporting Person (Instruction 13)

NOTE: If the space provided in any table is insufficient, use a continuation sheet which identifies the table and columns to which it relates.

BILLING CODE 8010—01—C

7. By adding § 249.105 to subpart B to read as follows:

§ 249.105 Form 5, annual statement of beneficial ownership of securities.

(a) This form shall be filed pursuant to Rule 16a–3 (§ 240.16a–3 of this chapter) for the annual statement of beneficial ownership of securities required to be filed pursuant to Section 16(a) of the Securities Exchange Act of 1934. Under Sections 16(a) and 23(a) of the Securities Exchange Act of 1934; Sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935; and Sections 30(f) and 38 of the Investment Company Act of 1940, and the rules and regulations thereunder, the Commission is authorized to solicit the information required by this form from officers, directors and certain security holders of registered issuers.

(b) Disclosure of the information specified in this form is mandatory, except for social security account numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of officers, directors and beneficial owners of registered companies. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

(c) Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social security account numbers, if furnished, will assist the Commission in differentiating among officers, directors and security holders whose own or issuer names are similar.

(d) Failure to disclose the information requested by this form, except for social security account numbers, may result in civil or criminal action against the persons involved for violation of provisions of the Federal securities laws and the rules promulgated thereunder.

8. By adding Form 5 (§ 249.105) to read as follows:

Note.—The text of Form 5 will not appear in the Code of Federal Regulations.

OMB Approval

OMB Number:
Estimated Burden Hours: 1.0
Expires: Pending Approval

Form 5—Annual Statement of Beneficial Ownership of Securities

Special Instructions for Completing Form 5

Under Sections 16(a) and 23(a) of the Securities Exchange Act of 1934; Sections 17(a) and 30(a) of the Public Utility Holding Company Act of 1935; and Sections 30(f) and 38 of the Investment Company Act of 1940, and the rules and regulations thereunder, the Commission is authorized to solicit the information required by this form from officers, directors and certain security holders of registered issuers.

Disclosure of the information specified in this form is mandatory, except for social security account numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of officers, directors and beneficial owners of registered issuers. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self- regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social security account numbers, if furnished, will assist the Commission in differentiating among officers, directors and security holders whose own or issuer names are similar.

Failure to disclose the information required by this form, except for social security account numbers, may result in civil or criminal action against the persons involved for violation of provisions of the Federal securities laws and the rules promulgated thereunder.

General Instructions

1. *When and Where Statements Are to Be Filed.*

(a) On or before the 45th day after the end of the issuer's fiscal year, three copies of the statement on this form, at least one of which is manually signed, shall be filed with the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. The filing date is the date of receipt at the Commission. At the same time, one duplicate original of the statement shall be filed with each exchange on which any class of equity securities of the issuer is registered, unless the issuer has in accordance with Rule 16a–3(c), designated a single exchange to receive such statements. One duplicate original also shall be sent to the issuer pursuant to Rule 16a–3(e).

(b) Acknowledgment of receipt of the statement by the Commission may be obtained by enclosing a self-addressed, stamped post card identifying the statement filed.

2. *Separate Statement for Each Issuer—Exception.*

A separate statement shall be filed with respect to the securities of each issuer, except that a single statement shall be filed with respect to the securities of a registered public utility holding company and all of its subsidiary companies.

3. *Classes of Securities To Be Reported.*

(a) Information must be furnished as required by this form with respect to all classes of equity securities of the issuer, even though one or more of such classes may not be registered pursuant to Section 12 of the Act.

(b) Information concerning derivative securities as defined by Rule 16a–1(c) (*e.g.*, options, warrants, convertible securities) must be reported on Table II.

(c) Persons reporting pursuant to Section 17(a) of the Public Utility Holding Company Act of 1935 shall include information required to be reported as to certain changes in the amount of securities beneficially owned, changes in the nature of beneficial ownership and the amount of their beneficial ownership at the end of the fiscal year of all classes of securities of the registered holding company and all of its subsidiary companies.

(d) Persons reporting pursuant to Section 30(f) of the Investment Company Act of 1940 shall include information as to transactions required to be reported as to certain changes in the amount of securities beneficially owned, changes in the nature of beneficial ownership and the amount of their beneficial ownership at the end of the fiscal year of all classes of securities of the registered closed-end investment company (other than "short-term paper" as defined in Section 2(a)(38) of the Act).

4. *Statement Required Only When Transactions Have Been Conducted.*

A statement on this form is required only when the reporting person has (1) conducted a transaction in the issuer's securities during the issuer's fiscal year that is reportable on Form 5 or (2) has failed to file a previously required Form 3, 4, or 5, (See Rule 16a–3(g)(3)).

5. *Transactions to Be Reported.*

(a) In accordance with Rule 16a–3(g)(2), all transactions in the issuer's securities conducted during the issuer's fiscal year that were exempted from Section 16(b) of the Exchange Act (by operation of rules promulgated pursuant to Section 16(b) of such Act) and, therefore, are to be reported on a deferred basis, shall be reported on this form unless, in the case of an exercise or conversion of a call or put equivalent position, previously reported pursuant to Rule 16a–4 on a Form 4. Small acquisitions that are to be reported on a deferred basis pursuant to Rule 16a–6(a) also shall be reported on this form unless previously reported.

(b) Any occurrence or transaction during or prior to the issuer's fiscal year required to be reported on Form 3 or 4 under Section 16(a) of the Act before the date of filing of this Form 5, but not so reported, shall be reported on this Form 5: *Provided, however,* That a completed Form 3 or 4 shall be appended to this Form 5.

(c) Transactions involving derivative securities shall be reported in Table II; all other transactions shall be reported in Table I.

6. *Reporting of Certain Transactions and Holdings.*

(a) When a transaction relates to the acquisition or disposition of two or more securities as a unit or such a unit is beneficially owned at the end of a fiscal year and both are required to be reported, report each security separately and describe the unit relationship in the space for comments below Table II. If one or more of the securities comprising the unit is not required to be reported, the other security or securities shall be reported separately and the unit relationship described as indicated above.

(b) Securities owned indirectly shall be reported on separate lines from those owned directly and also from those owned through a different type of indirect ownership.

(c) In reporting the acquisition, disposition or end of a fiscal year beneficial ownership of common stock that is convertible into another type of common stock, the transaction should be listed on Table I with the number of shares or units subject to the conversion privilege and the conversion price per share or unit set forth in the explanation space. Other convertible securities should be reported as derivative securities in Table II.

(d) If a derivative security is converted or exercised and the transaction has not been reported on Form 4, the transaction shall be reported on Table II and the acquisition or disposition of the underlying security shall be reported on Table I.

7. *Title of Securities.*

The title of securities in Column 1 of Table I and Columns 1 and 3 of Table II shall be stated as specifically as possible; for example, "Common stock," "Class A common stock," "12% Convertible Preferred Stock," etc. Include the name of the issuer of the securities if it is a public utility holding company or a subsidiary thereof.

8. *Statement of Amounts of Securities.*

(a) In stating amounts of securities in Columns 3, 4 and 7 of Table I and Columns 4, 5, 6, 9 and 10 of Table II, give the number of securities, or if debt is required to be reported, give the face amount of the debt securities.

(b) Report only those securities of which the person is a beneficial owner as defined by rule 16a–1(a)(2) (*i.e.*, in which a pecuniary interest is present).

(c) In stating amounts of securities beneficially owned through a partnership, corporation, trust, or other entity, the reporting person shall indicate only the amount of securities representing the proportionate interest of the person in the transaction or holdings of the partnership, corporation, trust, or other entity. Alternatively, at the option of the reporting person, the entire amount of the entity's interest may be reported. See Instruction 1o(b) below.

9. *Purchase or Sale Price of Securities.*

(a) If any transaction reported on Table I or II involved a purchase or sale of securities for cash or obligation to pay cash, state in Column 6 of Table I or Column 8 of Table II the purchase price per share or unit, exclusive of brokerage commissions or other costs of execution. If the transaction was only partly for cash and partly for other consideration, state the amount of cash per share or other unit and the nature of the other consideration. If the transaction did not involve cash, state the nature of the consideration given or received.

(b) When two or more securities are purchased or sold as a unit, the purchase or sale price of the unit shall be stated in Column 6 of Table I or Column 8 of Table II with respect to one of the securities and cross-referenced with respect to the other security or securities.

10. *Type of Ownership of Securities.*

(a) The following securities shall be reported as owned directly: securities held in the name of the reporting person or in the name of a bank, broker, or nominee for the account of the reporting person; and securities held in joint tenancy, tenancy in common, tenancy by the entirety, or as community property.

(b) Securities that are beneficially owned, but that are not owned directly, *e.g.*, through a member of the reporting person's "immediate family" as that term is defined in Rule 16a–(1)(e), shall be reported as indirectly owned; "beneficial owner" is defined in Rule 16a–1(a)(2). Securities holdings attributed to a reporting person due to the person's interest in a partnership, corporation, trust, or other entity also are considered to be owned indirectly.

(c) Beneficial ownership of the securities reported on this form may be disclaimed unless mandated by a rule under Section 16(a) of the Securities Exchange Act of 1934. See Rule 16a–1(a)(4).

11. *Type of Derivative Security.*

The type of derivative security owned shall be reported in Column 1 of Table II. If appropriate, state whether it represents a right to buy, a right to sell, an obligation to buy, or an obligation to sell, the underlying securities.

12. *Beneficial Ownership at End of Fiscal Year.*

Beneficial ownership at the end of the fiscal year covered by the statement (Column 7 of Table I and Column 9 of Table II) shall be shown for all equity securities required to be reported even though there has been no change during the fiscal year in the aggregate ownership of securities of one or more classes or accounts. For example, a person reporting a transaction relating to common stock shall, in addition to providing all the information in Table I relating to such transaction, report the amount of preferred stock, convertible debentures, etc., owned at the end of the fiscal year. See Instruction 4 above as to when reports on this form are required.

13. *Inclusion of Additional Information.*

A statement may include any additional information or explanation deemed relevant by the person filing the statement.

14. *Signature.*

(a) If the statement is filed for an individual, it shall be signed by the individual or specifically on behalf of the individual by a person authorized to sign for the individual. If signed on behalf of the individual by another person, the authority of such person to sign the statement shall be confirmed to the Commission in writing in an attachment to the statement or as soon as practicable in an amendment by the individual for whom the statement is filed, unless such a confirmation still in effect is on file with the Commission.

(b) If the statement is filed for a corporation, partnership, trust, etc., the name of the organization shall appear over the signature of the officer or other person authorized to sign the statement, and the capacity in which the individual signed set forth.

BILLING CODE 8010-01-M

OMB APPROVAL	
OMB Number:	3235-0xxx
Expires:	Pending Approval
Estimated average burden hours per response.....	1.00

U.S. Securities and Exchange Commission
Washington, D.C. 20549

FORM 5

Annual Statement of Beneficial Ownership of Securities
Filed Pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935, or Section 30(f) of the Investment Company Act of 1940

(Please Print or Type)

1. Name and Address of Reporting Person (Last, First, Middle)	2. Name and Address of Issuer Name	3. Issuer State of Incorporation or Organization	5. Relationship of Reporting Person to Issuer (Check all which apply)
Number and Street	Number and Street	4. IRS or Social Security Identifying Number of Reporting Person	☐ Director ☐ Officer ☐ 10% Owner ☐ Other (Specify)
City, State, Zip Code	City, State, Zip Code		
6. Job Title of Officer/Director (e.g., President and Director, Chief Financial Officer, etc.)		7. Statement for Issuer's Fiscal Year Ending: Month / Day / Year	8. If an Amendment, give date of Statement to be Amended: Month / Day / Year

Table I - Securities Transactions Reported on a Deferred Basis and Beneficial Ownership
(Transactions Involving Derivative Securities of the Issuer Shall be Reported on Table II - Instructions 5 and 6)

1. Title of Securities (Report Different Types of Ownership on Separate Lines) (Instruction 7)	2. Date of Transaction (Give Market Transaction Trade Date or Stock Split or Dividend Record Date) Month	Day	Year	3. Amount of Securities Acquired (Instruction 8)	4. Amount of Securities Disposed of (Instruction 8)	5. Code for Character of Transaction Reported (See Codes Below)	6. Purchase or Sale Price Per Share or Unit (Instruction 9)	7. Amount of Securities Owned at End of Fiscal Year (Instructions 8 and 12)	8. Type of Ownership (D) - Direct (I) - Indirect (Instruction 10)	9. Nature of Indirect Ownership (e.g., "By Spouse," "By X Trust," "By Y Corporation," "By Self as Trustee for Children,"etc.)

FORM 5 (continued)

Table II - Derivative Securities (e.g., options, warrants, SARs, convertible securities) Transactions Reported on a Deferred Basis and Beneficial Ownership
(the term "Derivative Securities" is defined in Rule 16a-1(c))
(Instructions 5 and 6)

1. Title and tye of Derivative Security (Report Different Types of Ownership on Separate Lines) (Instrs. 7 and 11)	2. Date of Transaction (Give Market Transaction Trade Date, or Stock Split or Dividend Record Date)			3. Title of Securities Subject to Derivative Security	4. Amount of Derivative Securities Acquired	5. Amount of Derivative Securities Disposed of	6. Amount of Securities Subject to Derivative Securities Acquired or Disposed of	7. Code for Character of Transaction Reported	8. Purchase or Sale Price of Derivative Security	9. Amount of Derivative Securities Owned at End of Fiscal Year	10. Amount of Securities Subject to Derivative Securities Owned at End of Fiscal Year	11. Purchase or Sale Price of Securities Subject to Derivative Security	12. Date Derivative Security Becomes Exercisable if not Presently Exercisable			13. Date of Expiration of Derivativ Security			14. Type of Ownership (D) - Direct (I) - Indirect	15. Nature of Indirect Ownership (e.g., "By Spouse," "By X Trust," "By Y Corporation," "By Self as Trustee for Children," etc.)
	Mo.	Day	Yr.	(Instr. 7)	(Instr. 8)	(Instr. 8)	(Instr. 8)	(See Codes Below)	(Instr. 9)	(Instrs. 8 and 12)	(Instr. 8)		Mo.	Day	Yr.	Mo.	Day	Yr.	(Instr. 10)	

Codes for Character of Transaction (Enter in Column 5 of Table I and Column 6 of Table II)

[Z] - Stock Split or Dividend/Rule 16b-10.....
[Y] - Reverse Stock Split/Rule 16b-10.....
[A] - Small Acquisition/Rule 16a-6.....
[B] - Acquired Pursuant to Qualified Benefit Plan/Rule 16b-3.....
[R] - Issuer Redemption/Rule 16b-4.....
[V] - Deposit or Withdrawal from Voting Trust or Deposit Agreement/Rule 16b-8.....
[G] - Acquired by Bonafide Gift/Rule 16b-5.....
[C] - Disposed of by Bonafide Gift.....
[X] - Acquired by Exercise of In-the-Money or At-the-Money Derivative Security/Rule 16b-6(b).....
[Q] - Disposed of by Exercise of In-the-Money or At-the-Money Derivative Security/Rule 16b-6(b).....
[W] - Transfer by Will or the Laws of Descent and Distribution/Rule 16b-5.....
[M] - Acquired by Conversion of Derivative Security/Rule 16b-6(b).....
[N] - Disposed of by Conversion of Derivative Security/Rule 16b-6(b).....
[G] - Expiration of Derivative Security (if long position)/Rule 16b-6(e).....
[I] - Acquisition or Disposition Pursuant to Merger or Consolidation/Rule 16b-7.....
[L] - Acquisition Pursuant to Reinvestment of Dividends or Interest/Rule 16b-9.....
[T] - Other Acquisition (Specify).....
[U] - Other Disposition (Specify).....

Explanation of Responses in tables:

Date of Statement

Signature of Reporting Person (Instruction 14)

NOTE: If the space provided in any table is insufficient, use a continuation sheet which identifies the table and columns to which it relates.

BILLING CODE 8010-01-C

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80c–89; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1; unless otherwise noted.

2. Section 270.30f–1 is revised to read as follows:

§ 270.30f–1. Applicability of Section 16 of the Exchange Act to Section 30(f).

(a) The filing of any statement prescribed under Section 16(a) of the Securities Exchange Act of 1934 shall satisfy the corresponding requirements of Section 30(f) of the Investment Company Act of 1940.

(b) The rules under Section 16 of the Securities Exchange Act of 1934 shall apply to any duty, liability or prohibition imposed with respect to a transaction involving any security of a registered closed-end company under Section 30(f) of the Act.

(c) No statements need be filed pursuant to Section 30(f) of the Act by an affiliated person of an investment adviser in his or her capacity as such if such person is solely an employee, other than an officer, of such investment adviser.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 274 continues to read as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.* * * *

2. By amending the instruction to sub-item 77Q of Form N–SAR (§ 274.101) to read as follows:

Note.—The text of Form N–SAR is not and this amendment will not be in the Code of Federal Regulations.

Form N–SAR

* * * * *

Instructions to Specific Items

* * * * *

Sub-Item 77Q: Exhibits.

* * * * *

(h) The information called for by Item 405 of Regulation S–K (17 CFR 229.405). Notwithstanding requirements in General Instruction A of this Form to file all items except items 80 through 85 semi-annually, registrants need complete this paragraph of the sub-item only once each year as an annual supplement to the form filed after the end of a registrant's fiscal year.

Dated: August 18, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–19900 Filed 8–28–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 89–20]

RIN 2125–AC35

Truck Size and Weight; National Network, Oregon

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA proposes to modify the National Network for commercial motor vehicles by adding and deleting certain routes in Oregon. The National Network was established by the final rule on truck size and weight published at 49 FR 23302 June 5, 1984. It is maintained under 23 CFR part 658, Appendix A, as amended. The additions and deletions have been requested by the State of Oregon based on an evaluation concerning 53-foot long semitrailers.

DATES: Comments on this docket must be received on or before September 28, 1989.

ADDRESS: Submit written, signed comments, to FHWA Docket No. 89–20, Federal Highway Administration, HCC–10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Torbik, Office of Planning, (202) 366–0233, Mr. Philip W. Blow, Office of Motor Carrier Information Management and Analysis, (202) 366–4036, or Mr. David C. Oliver, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The designated National Network on which commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act (STAA) of 1982, Public Law 97–424, 96 Stat. 2097, may operate, was first established by the final rule (23 CFR part 658) published in the Federal Register at 49 FR 23302, June 5, 1984. Routes on the National Network are listed or described by category in Appendix A of the rule. Additional routes not on the network but available for STAA vehicles have also been identified at State request.

Procedures for the addition and deletion of routes are outlined in 23 CFR 658.11. A number of revisions to the National Network have been completed or initiated by the FHWA in separate rulemaking actions. One such revision was a final rule for the State of Oregon published on June 5, 1989, at 54 FR 23976. Revisions may also be initiated by the States, or by others through the States.

The Oregon Department of Transportation, as the Governor's designee, has requested the addition of two route segments and the deletion of fifteen route segments on the National network. The request was the result of State evaluations of National Network routes with respect to 53-foot long semitrailers. On January 29, 1988, the FHWA published a rule in 23 CFR part 658, Appendix B (53 FR 2597) which established a grandfathered semitrailer length of 53 feet in Oregon.

Prior to the final rule on semitrailer lengths, Oregon had accepted its National Network (NN) routes on the basis of accommodating an STAA-authorized semitrailer with a 48-foot maximum length. Several of the route segments contain sharp curves and narrow lane widths which the State considered only marginally able to accommodate a 48-foot semitrailer.

The State evaluations of federally- and/or State-designated routes considered safety, availability of alternative routes, and the effects on interstate commerce, local industry and the environment. The adequacy of the geometrics and the operational characteristics of the route segments were also analyzed. Special attention was given to the effect of off-tracking on horizontal curves and the resulting intrusion of 53-foot semitrailers into the opposing lane when negotiating the sharper curves. The reviews not only identified NN route segments with safety problems, but also other segments that could safely accommodate all STAA-authorized vehicles.

Federal authority is required for the segments proposed for addition to accommodate grandfathered

semitrailers because State law applicable to roads not on the NN restricts truck tractors and semitrailers to an overall length limit of 65 feet. The State has noted that segments proposed for the deletion would continue to be available to other STAA-authorized vehicles under State law.

Additions

The State has proposed the addition of two routes segments to the National Network. The FHWA worked closely with the State during the review of each segment. Some of the specific factors considered were accident rates, traffic volumes, horizontal curvature, grades, lane width, shoulder width, sight distance and network connectivity.

The first segment is an 18.5-mile segment of OR 35 between Baseline Road near Mt. Hood and US 26 Government Camp. Designation of this segment will place the entire length of OR 35 between I–84 Hood River and US 26 Government Camp on the National Network. This addition will provide a connection between two routes presently on the National Network.

The second addition is 69.3 miles of OR 140 between OR 62 White City and US 97 Klamath Falls. The proposed addition will connect OR 62 and US 97 that are presently on the National Network.

The FHWA has reviewed the route segments and finds that they will support safe operation of STAA authorized vehicles and increase the service provided. The FHWA therefore proposes the segments be added to the NN.

Deletions

Ten segments to be deleted have similar geometric features that could, under certain conditions, adversely affect safety. The two most significant features are sharp horizontal curvature and narrow lane width. A typical example of the review performed on each of the ten segments is the 49.8-mile segment of US 20 between Newport and Philomath. The segment contains 38 miles of the two-lane roadway with lane widths less than 12 feet, and 9 miles with lane widths of 9 feet. There are 80 horizontal curves sharper than 6 degrees. Of these, 65 are too sharp for the grandfathered 53-foot semitrailer to remain within its travel lane. On ten of the curves, the vehicles will intrude more than 4 feet into the opposing lane. The maximum intrusion on the segment is 7 feet 6 inches. The other segments have similar geometrics and numerous significant intrusions into the opposing lane of traffic. The ten segments are:

US 20—49.8 miles between Newport and Philomath;
US 26—47.8 miles between Prineville and Mitchell;
US 197—46.4 miles between The Dalles and Maupin;
US 395—90.3 miles between Pendleton and Long Creek;
OR 47—24.6 miles between Forest Grove and McMinnville;
OR 51—8.7 miles between Monmouth and Salem;
OR 82—71.4 miles between LaGrande and Joseph;
OR 99—24.1 miles between Ashland and I–5 north of Central Point;
OR 206—40.7 miles between Wasco and Condon; and
OR 206/207—34.2 miles between Heppner and Kinzua Road.

It appears that the geometrics on each segment are not adequate to support the safe operation of the longer semitrailers because of significant intrusions into the opposite lane on numerous horizontal curves.

The next five segments were proposed for deletion because they serve no significant interstate commerce or National Network purpose. Two of the segments connect to the National Network at one end only and do not connect to any State designated network at the other end. The two segments are:
US 101—9.3 miles between Tillamook and Beaver and
OR 62—16.4 miles between White City and Trail.

The third segment is 35.1 miles of US 101 between Gold Beach and the California State line. Neither end of this segment connects to the National Network or to any State designated route.

The fourth and fifth segments are both relatively short segments of US 30 that function as I–84 business routes through the center of Cascade Locks and Pendleton. Both segments are accessible to all STAA authorized vehicles under the State's reasonable access policy. The fourth segment is 2.0 miles in length at Cascade Locks and the fifth segment is 6.6 miles in length at Pendleton. The proposed rule would also clarify the terminus or OR 11 which has been at I–84 rather than US 30 in Pendleton.

The FHWA is proposing deletion of the segments at this time to gain benefit of public comment.

Regulatory Impact

The FHWA has considered the impacts of this rulemaking and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 nor a significant rulemaking under the regulatory policies and procedures of the Department of Transportation (DOT). These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking would technically amend the June 5, 1984, the final rule by adding and deleting certain highway segments in accordance with statutory provisions. The impacts of the changes addressed in this rulemaking do not significantly alter the impacts fully considered in the original impact statement accompanying the June 5 rule. These segments represent a very small portion of the National Network, and the changes would have neglible impact on the prior system. Thus, no revised regulatory evaluation is needed. For the same reasons, and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action does not have a significant economic impact on a substantial number of small entities.

Federalism

The FHWA has considered the "federalism" implications of this action in accordance with the principles and policymaking criteria of E.O. 12612, *Federalism*, of October 26, 1987. The Final Rule is in response to an application by the State. There are no adverse impacts on the State or significant intrusions into State authority as a result of this rulemaking.

The regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Due to the limited subject matter of this document and the familiarity with the proposal by the interests in Oregon, a thirty (30) day public comment period is considered adequate.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor Carrier—size and weight.

Issued on: August 22, 1989.

Eugene R. McCormick,

Deputy Administrator.

In consideration of the foregoing, the FHWA proposes to amend chapter I of title 23, Code of Federal Regulations, by

amending Appendix A to part 658 for the State of Oregon to read as set forth below.

PART 658—[AMENDED]

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97–424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. app. 2311, 2313, and 2316), as amended by Pub. L. 98–17, 97 Stat. 59, and Pub. L. 98–554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

Appendix A to Part 658—(Amended)

2. Appendix A to Part 658 is amended for the State of Oregon by removing the following Posted Route Number entries:

Route	From	To
OR 11	US 30 Pendleton	WA State Line.
OR 35	Baseline Road MP 82.11.	I–84 Hood River.

and inserting in their places the following:

Route	From	To
OR 11	I–84 Pendleton	WA State Line.
OR 35	US 26 Government Camp.	I–84 Hood River.

3. Appendix A to Part 658 is amended for the State of Oregon by adding at the end of the Oregon listing the Posted Route Number entry:

Route	From	To
OR 140	OR 62 White City	US 97 Klamath Falls.

4. Appendix A to part 658 is amended for the State of Oregon by removing the Posted Route Number entries:

Route	From	To
US 20	US 101 Newport	ECL Sweet Home.
US 26	US 101 Cannon Beach Junction.	Mitchell.
US 30	In Cascade Locks	
US 30	I–84 W. of Pendleton.	I–84 E. of Pendleton.
US 101	CA State Line	Gold Beach.
US 101	MP 75.54 N. of Beaver.	WA State Line.
US 197	OR 216 Maupin	WA State Line.
US 395	Long Creek	Pendleton.
OR 47	OR 99W near McMinnville.	US 26 N. of Banks.
OR 51	OR 99W Monmouth	OR 22 near Eola.
OR 62	Medford	Trail.
OR 82	I–84 La Grande	Joseph.
OR 99	Ashland	Central Point.
OR 206	US 97 Wasco	OR 19 Condon.
OR 207	US 730 Cold Springs Jct.	MP 23.56 Kinzua Rd.

and inserting in place of US 20, US 26, US 101, US 197, OR 47, OR 62 and OR 207 the following, respectively:

Route	From	To
US 20	OR 34 Philomath	ECL Sweet Home.
US 26	US 101 Cannon Beach Junction.	OR 126 Prineville.
US 101	OR 6 Tillamook	WA State Line.
US 197	I–84, The Dalles	WA State Line.
OR 47	OR 8 Forrest Grove	US 26 N. of Banks.
OR 62	Medford	OR 140 White City.
OR 207	US 730 Cold Springs Jct.	OR 74 S. Int. Heppner.

[FR Doc. 89–20287 Filed 8–28–89; 8:45 am]

BILLING CODE 4910–22–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–366, RM–6824]

Radio Broadcasting Services; Knoxville, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Dominion Publishing, Inc., and Leighton Enterprises, Inc., requesting the substitution of Channel 221C3 for Channel 221A at Knoxville, Iowa, and the modification of their share-time Stations KTAV–FM and KRLS to specify the higher powered channel. Channel 221C3 can be allotted to Knoxville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 41–19–12 and West Longitude 93–05–42. In accordance with Section 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Knoxville or require that the petitioners demonstrate the availability of an additional equivalent channel for use by such parties.

DATES: Comments must be filed on or before October 16 , 1989, and reply comments on or before October 31, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerry Miller, Esq., Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel to petitioners).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–366, adopted August 7, 1989, and released August 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–20292 Filed 8–28–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–365, RM–6811]

Radio Broadcasting Services; Ottumwa, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Gillbro Communications Limited Partnership seeking the substitution of Channel 224C3 for Channel 224A at Ottumwa, Iowa, and the modification of its license

for Station KTWA to specify the higher powered channel. Channel 224C3 can be allotted to Ottumwa in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.1 kilometers (5.0 miles) northwest to avoid a short-spacing to the pending application of Station KGRC, Channel 225C1, Hannibal, Missouri (BPH–890202IC) and to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 41–05–00 and West Longitude 92–27–30. In accordance with Section 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 224C3 at Ottumwa or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 16, 1989, and reply comments on or before October 31, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Vincent A. Pepper, Esq., Barbara R. Merlie, Esq., Pepper & Corazzini, 1776 K Street NW., Suite 200, Washington, DC 20006 (Counsel to Gillbro Communications).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–365, adopted August 7, 1989, and released August 23, 1989. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–20291 Filed 8–28–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–367, RM–6835]

Radio Broadcasting Services; Klondike, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Sandlapper Broadcasting, seeking the allotment of Channel 253A to Klondike, South Carolina, as its first local FM service. Petitioner should provide community data to show that Klondike is a community for allotment purposes. Channel 253A can be allotted to Klondike in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 33–41–27 and West Longitude 79–07–05.

DATES: Comments must be filed on or before October 16 1989, and reply comments on or before October 31 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Toni T. Rinehart, Sandlapper Broadcasting, 2557–E Mountain Lodge Circle, Birmingham, Alabama 35216 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–367, adopted August 7, 1989, and released August 23 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–20293 Filed 8–28–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–364, RM–6796]

Radio Broadcasting Services; Plantersville, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Carocom Media seeking the allotment of Channel 253A to Plantersville, South Carolina, as its first local FM service. The Commission seeks additional information to determine whether Plantersville is a community for allotment purposes. Channel 253A can be allotted to Plantersville with a site restriction of 5.6 kilometers (3.4 miles) east to avoid a short-spacing to Station WWKT–FM, Channel 252A, Kingstree, South Carolina. The coordinates for this allotment are North Latitude 33–33–08 and West Longitude 79–09–11.

DATES: Comments must be filed on or before October 16, 1989, and reply comments on or before October 31, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William J. Pennington, III, Carocom Media, 5519 Rockingham Road-East, Greensboro, NC 27407 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–364, adopted August 7, 1989, and released August 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Divsion, Mass Media Bureau.

[FR Doc. 89–20290 Filed 8–28–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

RIN 0648–AC16

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan, three minority reports, and request for comments.

SUMMARY: NOA issues this notice that the Gulf of Mexico Fishery Management Council has submitted Amendment 1 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP) for Secretarial review and is requesting comments from the public.

DATE: Comments will be accepted until October 25, 1989.

ADDRESSES: Comments should be sent to William R. Turner, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702. Mark envelope, "Reef Fish Amendment 1." Copies of Amendment 1 may be obtained from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: William R. Turner, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a council-prepared fishery management plan or amendment be submitted to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving the document, immediately publish a notice of its availability for public review and comment. The Secretary will consider public comments in determining approvability of the document.

Amendment 1 proposes extensive changes in the reef fish management structure primarily to restore diminished spawning stocks to a level equivalent to 20 percent of the biomass that would be available in the absence of fishing mortality. Red snapper, the single most important species in the reef fish complex, is severely overfished and on the verge of collapse, while certain other species of snappers and some of the groupers apparently are overfished but to a lesser degree. Amendment 1 contains a definition of overfishing as required by the revised guidelines for fishery management plans.

Specific measures that are proposed in the amendment would: (1) Eliminate the current exemptions to the size limit for red snapper; (2) establish size limits for other major species; (3) establish bag limits for red snapper, certain other snappers, groupers, and amberjack; (4) establish commercial quotas for red snapper, deep-water groupers, and shallow-water groupers; (5) place areal restrictions on the use of longline and buoy gear; (6) specify procedures for adjusting the total allowable catch, size limits, bag limits, and other restrictive measures on an annual basis; (7) modify permitting and reporting requirements for reef fish fishermen; (8) reduce the number of allowable fish traps per vessel; (9) eliminate entanglement nets; and, (10) extend the "stressed area" by adding coastal waters off Louisiana and Texas. Other changes are also proposed.

Three minority reports object to: (1) The prohibition of the retention and sale of undersized fish in certain instances; (2) the bag limits being applied to shrimp vessels; (3) the geographical extension of stressed areas; (4) the maximum number of persons aboard charter and headboats to fish commercially; (5) the commercial quota on groupers; (6) the prohibition of entangling nets; or (7) the 20-inch minimum size limit for red grouper. Regulations proposed by the Council to implement Amendment 1 are scheduled to be filed by September 10, 1989 for publication.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 23, 1989.

David S. Crestin,

Deputy Director, Office of Fishery Conservation and Management.

[FR Doc. 89–20259 Filed 8–23–89; 4:41 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 166
Tuesday, August 29, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 25, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Revision

- Animal and Plant Health Inspection Service
- Animal Welfare
- VS 18-1, 18-1A, 18-3, 18-5, 18-6, 18-9, 18-11, 18-19, 18-20, 18-23, 18-6A

Recordkeeping; On occasion; Weekly; Semi-annually; Annually State or local governments; businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 70,942 responses; 95,961 hours; not applicable under 3540(h)
Dr. R.L. Crawford (301) 436-7833

- National Agricultural Statistics Service

Supplemental Acreage Survey
On occasion; Annually
Farms; 300,140 responses; 85,939 hours; not applicable under 3504(h)
Larry Gambrell (202) 447-7737

New Collection

- Food and Nutrition Service

Evaluation of the Food Distribution Program on Indian Reservations (FDPIR)
One time only
Individuals or households; State or local governments; 955 responses; 1,079 hours; not applicable under 3504(h)
Fumiyo Hunter (703) 756-3115

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 89-20323 Filed 8-28-89; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Environmental Impact Statement for the Proposed Threemile Timber Sale, Medicine Bow National Forest, Carbon County, WY

AGENCY: Forest Service, USDA.

ACTION: Extension of time period for public review of the Draft Environmental Impact Statement.

SUMMARY: Notice of filing a draft environmental impact statement (DEIS) for the Threemile Timber Sale was published in the Federal Register Vol. 54 No. 129 on July 7, 1989. Comments were due on September 1, 1989. The period for commenting is now extended 45 days until October 15, 1989. The extension has been granted to provide time for parties to review and formulate comments on the DEIS. In addition to extending the period for comments, open house meetings are scheduled for September 19, 1989 from 3:00 pm to 7:00 pm and on September 23 from 9:00 a.m. to 1:00 pm. Both meetings will be at the Holiday Inn in Laramie, Wyoming in the Ivinson Room.

DATE: Comments on the DEIS must be received by October 15, 1989.

ADDRESSES: Send written comments to the District Ranger, 605 Skyline Drive, Laramie, WY 82070.

FOR FURTHER INFORMATION CONTACT: Gary Rorvig, Laramie District Engineer (307) 745-8971.

Dated: August 21, 1989.

Ron Olsen,

Acting Forest Supervisor.

[FR Doc. 89-20286 Filed 2-28-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Economic and Statistical Affairs

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economic and Statistical Affairs Senior Executive Service (SES) Performance Appraisal System:

Frederick T. Knickerbocker
Joseph F. Caponio
Carol S. Carson
John E. Cremeans
Robert B. Ellert
Lucy A. Falcone
Susanne H. Howard
C. Louis Kincannon
Daniel B. Levine
Harry A. Scarr
Charles A. Waite
Katherine K. Wallman
Allan H. Young

Edward A. McCaw,

Executive Secretary, Economic and Statistical Affairs, Performance Review Board.

[FR Doc. 89-20285 Filed 8-28-89; 8:45 am]

BILLING CODE 3510-BS-M

Economic Development Administration

Senior Executive Service; Performance Review Board Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economic Development Administration Senior Executive Service (SES) Performance Appraisal System:

Craig M. Smith
John E. Corrigan
Edward G. Jeep
Charles E. Oxley
George Muller

David Farber

Edward A. McCaw,

Executive Secretary, Economic Development Administration, Performance Review Board.

[FR Doc. 89-20284 Filed 8-28-89; 8:45 am]

BILLING CODE 3570-BS-M

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review of Final Affirmative Countervailing Duty Determination Respecting Fresh, Chilled and Frozen Pork from Canada made by International Trade Administration, Import Administration, which was filed by the Canadian Pork Council and its members with the United States Section of the Binational Secretariat on August 22, 1989.

SUMMARY: On August 22, 1989, the Canadian Port Council and its members filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final affirmative countervailing duty determination respecting fresh, chilled and frozen pork from Canada, Import Administration file number C-122-807, issued by the International Trade Administration, Import Administration and published in 54 Federal Register 30774 on July 24, 1989. The Binational Secretariat has assigned Case Number USA-89-1904-06 to this Request for Panel Review. In addition to the first Request for Panel Review, requests have also been filed by the Canadian Meat Council and its members, Canada Packers, Inc., the Government of the Province of Alberta and the Government of Canada.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting U.S. Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with reveiw by independent binational panels. When a Request for Panel Review is filed, a panel will be established to act in place of national courts to expeditiously review the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the Federal Register on December 30, 1988 (53 FR 53212). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(a) requires the Secretary to publish Notice of the receipt of a Request for Panel Review stating that a Request for Panel Review was filed with the United States Section of the Binational Secretariat on August 22, 1989, pursuant to Article 1904 of the Agreement.

Rule 35(1)(c) of the Rules provides that:

(a) a Party or interested person may challenge the final determination n whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is September 21, 1989);

(b) a Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is October 6, 1989); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: August 23, 1989.

James R. Holbein,

Acting U.S. Secretary, FTA Binational Secretariat

[FR Doc. 89-20307 Filed 8-28-89; 8:45 am]

BILLING CODE 3510-DA-M

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants; Recovery Plans

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of availability and request for comments.

SUMMARY: The Draft Hawaiian Sea Turtle Recovery Plan is available for review by interested parties prior to final approval and adoption by National Marine Fisheries Service (NMFS). The plan was developed by the Hawaiian Sea Turtle Recovery Team which was appointed in late 1985 by NMFS to develop a Recovery Plan for listed sea turtles found in Hawaiian waters. Membership included biologists and resource managers from NMFS, U.S. Fish and Wildlife Service, State of Hawaii Department of Land and Natural Resources, and academia.

DATES: Comments on the draft recovery plan must be received on or before October 30, 1989.

ADDRESSES: Comments should be addressed to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry St., Terminal Island, CA 90731. Copies of the Draft Hawaiian Sea Turtle Recovery Plan are available upon request from James H. Lecky, Chief, Protected Species Management Branch, Southwest Region, National Marine Fisheries Service, 300 S. Ferry St. Terminal Island, CA 90731 or Eugene T. Nitta, Protected Species Management Branch, Pacific Area Office, Southwest Region National Marine Fisheries Service, 2570 Dole St., Honolulu, HI 96822-2396.

FOR FURTHER INFORMATION CONTACT: James H. Lecky or Eugene T. Nitta at the addresses above.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et seq.) requires that the agencies responsible for listed species develop and implement recovery plans for the conservation and survival of threatened and endangered species, unless it is determined that such plans will not promote the conservation of the species. Accordingly, NMFS appointed an interagency Hawaiian Sea Turtle Recovery Team which developed a Draft Hawaiian Sea Turtle Recovery Plan. The Plan has been reviewed by many outside agencies and individuals for technical content. Priority needs for research that will support sound management actions for the conservation and enhancement of listed sea turtles in Hawaii and their habitat are outlined in the Draft Recovery Plan. Where research and/or management activities are ongoing, specific agencies have been identified as lead or cooperating agencies.

The Draft Recovery Plan ultimately is intended as a guide for those entities responsible for research, conservation, education and information, enforcement, and management to consider sea turtle

recovery issues in their operations or as part of their priority activities in future agency actions. One of the 1988 amendments to the ESA required "* * * estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal." Funding and resource allocations are now included in the Draft Plan as an appendix.

Dated: August 23, 1989.

Morris M. Pallozzi,

Director, Office of Enforcement.

[FR Doc. 89-20263 Filed 8-28-89; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Senior Executive Service; Performance Review Board Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the National Telecommunications and Information Administration Senior Executive Service (SES) Performance Appraisal System:

Harold G. Kimball
Dennis R. Connors
Richard D. Parlow
William D. Gamble
Neal B. Seitz
Larry Eads
Robert J. Mayher
William F. Utlaut
Roger K. Salaman
Charles M. Rush
Robert J. Matheson
David Farber

Edward A. McCaw,

Executive Secretary, National Telecommunications and Information Administration, Performance Review Board.

[FR Doc. 89-20283 Filed 8-28-89; 8:45 am]

BILLING CODE 3510-BS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Textile and Apparel Categories With Harmonized Tariff Schedule of the United States Annotated; Changes to the 1989 Correlation; Correction

August 23, 1989.

Beginning on page 27925 of the notice published in the **Federal Register** on July 3, 1989 (54 FR 27924), make the following changes for Category 229:

Line 1:

Remove: "Delete 5810.10.0000"

Insert: "Add 5810.10.0000—Embroidery in the piece, in strips or in motifs without visible ground"

Line 2:

Remove: "Add 5810.10.0090—Embroidery without visible ground, other than labels and badges"

Insert: "Delete 5810.10.0090"

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-20308 Filed 8-28-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

Meeting of National Council on Vocational Education

AGENCY: National Council on Vocational Education.

ACTION: Notice of Public Meeting of the National Council on Vocational Education.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: September 17, 1989—7:00 PM to 9:00 PM, September 18, 1989—9:30 AM to 4:00 PM.

ADDRESS: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037.

Location: September 17, 1989—Chairman Farley's Suite, September 18, 1989—Ambassador Room, (202) 857-3388.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under Section 104 of the Vocational Education Amendments of 1968, Public Law 90-576.

The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

Agenda: The proposed agenda will include:

September 17, 1989, Briefing and Updating of the Council Initiatives, Budget Report, Awards Report, Newsletter and Council materials, Briefing on the JTPA Amendments.

September 18, 1989, Discussions on the following: National Awareness Campaign, Occupational Competency, Annual Report, Reauthorization, Future Initiatives.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Winterton, Executive Director, 330 C Street, SW., MES—Suite 4080, Washington, DC 20202-7580, (202) 732-1884.

Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9:00 a.m. to 4:30 p.m.

Signed at Washington, DC, August 23, 1989

Joyce Winterton,

Executive Director.

[FR Doc. 89-20264 Filed 8-28-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to Humbug Mountain Research Laboratories

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FG01-89CE15453 to Humbug Mountain Research Laboratories.

SCOPE: The funding for this grant will support the continuing research in the development of software for controlling the generation of the sound waves, the measurements and identification of the resonance frequencies, the upgrading of the electronic circuitry and laboratory testing to calibrate readings against measured particulate flows.

ELIGIBILITY: Based on acceptance of an unsolicited application, eligibility of this grant award is being limited to Humbug Mountain Research Laboratories, who has developed the technology, a method of using resonance shifts in sound waves as a mean of measuring quantities of solids, suspended in air or similar fluids, flowing through pipelines. The project is of high technical merit, representing an innovative technology which has a strong possibility of allowing for future reduction in the nation's energy consumption.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Calvin Lee, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director,

Contract Operations Division "B", Office of Procurement Operations".

[FR Doc. 89–20327 Filed 8–28–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Grant to Sanford & Russell, Inc.

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE–FG01–89CE15436 to Sanford & Russell, Inc.

SCOPE: The funding for this grant will support the building and loop testing of six prototype drilling devices, which have the potential to prevent most blowouts in oil wells, thus saving oil from being wasted and preventing damage to the environment.

ELIGIBILITY: Based on acceptance of an unsolicited application, eligibility of this grant award is being limited to Sanford & Russell, Inc. who has high qualification in building, testing and analyzing tests results of prototype drilling devices. The project will allow Sanford & Russell, Inc. to test the drilling devices downhole with cooperating drilling companies. In addition, this is a project with a high technical merit, representing an innovative technology that has a strong possibility of adding to the national energy resources.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Calvin Lee, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

FR Doc. 89–20328 Filed 8–28–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Grant to Michael Gondouin, S–Cal Research Corporation

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE–FC01–89CE15446.

SCOPE: The funding for this grant will support the conceptual engineering of a downhole catalytic converter which will be used to estimate the facilities for a specific location, the West Sak heavy oil reservoir on the north slope of Alaska.

ELIGIBILITY: Based on acceptance of an unsolicited application, eligibility of this grant award is being limited to Michael Gondouin, S–Cal Research Corporation, who has developed a process for recovering Viscous (Heavy) Oils from Deep Underground Formations and thereby has gained valuable experience in researching heavy oil exploration. This project will allow Michael Gondouin, S–Cal Research Corporation, to continue his research and improve upon the current technology that has the potential on a global scale to unlock the recovery of several trillion barrels of oil that is not economically recoverable now.

The term of this grant shall be for 24-months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Lisa Tillman, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contact Operations Division "B" Office of Procurement Operations.

[FR Doc. 89–20329 Filed 8–28–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER89–609–000 et al.]

Vermont Electric Power Company, Inc., et al.; Electric Rate, Small power production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Vermont Electric Power Company, Inc.

[Docket No. ER89–609–000]

August 18, 1989.

Take notice that on August 16, 1989, Vermont Electric Power Company, Inc. (VELCO) tendered for filing a revised Exhibit A (as to Citizens Utilities Company only) to VELCO Power Purchase Agreement, dated as of June 1, 1981, FERC Rate Schedule No. 234. The revised exhibit A authorizes VELCO to acquire energy for Citizens Utilities from Niagara Mohawk Corporation under the Agreement between Niagara Mohawk Corporation and VELCO, dated as of February 1, 1983, when such energy is available and when Citizens Utilities determines that it is economic.

VELCO proposes that the revision become effective on August 16, 1989. VELCO requests a waiver of the Commission's regulations to allow the filing to become effective as of that date. If the waiver is granted, VELCO states that there will be no adverse effect upon any of VELCO's customers. If the waiver is not granted, VELCO requests that the filing become effective on October 16, 1989, or on such other date as the Commission deems appropriate.

VELCO states that it has served the filing upon Citizens Utilities Company and upon the Vermont Public Service Board and the Vermont Department of Public Service.

Comment date: September 1, 1989, in accordance with the Standard Paragraph E at the end of this notice.

2. Amoco Corporation

[Docket No. QF89–305–000]

August 18, 1989.

On August 3, 1989, Amoco Corporation (Applicant), of Warrenville Road and Mill Street, Naperville, Illinois 60566, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Naperville, Illinois. The facility will consist of a combustion turbine generator and a heat recovery steam generator equipped with supplementary firing. Thermal energy recovered from the facility will be utilized for space heating and cooling and for research processes in the Amoco Research Center. The electric power production capacity of the facility will be 8,300 kW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin approximately January 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Blackstone Valley Electric Company

[Docket No. ER89-608-000]

August 18, 1989.

Take notice that on August 16, 1989, Blackstone Valley Electric Company (BVE) tendered for filing Supplement No. 1 to Rate Schedule No. 26 in the form of an Amended and Restated Interconnection Agreement between itself, Ocean State Power (OSP) and Ocean State Power II (OSP II). This Agreement provides for construction, ownership and payment for facilities to be built in order to interconnect the generating station of the Ocean State Power Projects (the Project) to BVE's transmission facilities (the Interconnection Facilities). The Agreement provides that, upon the commencement of commercial operation of the second unit, OSP shall pay one hundred (100) percent of the yearly cost of service for the Interconnection Facilities. Upon the commencement of commercial operation of the second unit, OSP and OSP II shall each pay fifty (50) percent of the yearly cost of service for the Interconnection Facilities. The Agreement does not constitute a rate increase.

Comment date: September 1, 1989, in accordance with Standard Paragraph E end of this notice.

4. Kentucky Utilities Company

[Docket No. ER89-610-000]

August 18, 1989.

Take notice that on August 17, 1989, Kentucky Utilities Company (KU) tendered for filing a new Agreement dated September 1, 1989 between KU and Big Rivers Electric Corporation (BR).

The new Agreement is intended to replace in its entirety the presently effective Agreement between KU and BR. The new Agreement contains proposed reciprocal Service Schedules for Emergency Energy, Economy Energy, Short-Term Power, Firm Power and Non Displacement Energy.

Copies of this filing have been sent to the Big Rivers Electric Corporation and the Kentucky Public Service Commission.

Comment date: September 5, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public insection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20253 Filed 8-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1957-003 Wisconsin]

Wisconsin Public Service Corp.; Availability of Environmental Assessment

August 22, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the existing Otter Rapids Hydroelectric Project located on the Wisconsin River near Eagle River in Vilas and Oneida Counties, Wisconsin and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the environmental impacts of the project and has concluded that approval of a new license for the project, with appropriate enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20257 Filed 8-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1958-000 et al.]

Northwest Pipeline Corp., et al.; Natural gas certificate filings

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP89-1958-000]

August 18, 1989.

Take notice that on August 16, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1958-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Exxon Corporation (Exxon), a producer, under the blanket certificate issued in Docket No. CP86-578-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated February 10, 1988, as amended, under its Rate Schedule TI-1, it proposes to transport up to 200,000 MMBtu per day equivalent of natural gas for Exxon. Northwest states that it would transport the gas through its system from any transportation receipt point on its system to any transportation delivery point on its system, as defined in the December 5, 1988, amendment.

Northwest advises that service under § 284.223(a) commenced July 1, 1989, as reported in Docket No. ST89-4401 (filed August 4, 1989). Northwest further advises that it would transport 1,200 MMBtu on an average day and 438, MMBtu annually.

Comment Date: October 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corp. Enron Gas Processing Company and Enron NGL Processing Limited Partnership

[Docket Nos. CP61–132–001 and CP68–5–003]

August 18, 1989.

Take notice that on August 17, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), Enron Gas Processing Company (EGP), and Enron NGL Processing Limited Partnership (EPP), all at 1400 Smith Street, Houston, Texas 77002, together referred to as Applicants, filed in the above referenced dockets, pursuant to section 7(c) of the Natural Gas Act their application to amend the certificates of public convenience and necessity issued in Docket No. CP61–132, as amended, and CP68–5, as amended, authorizing the exchange of gas between Northern and EGP, to reflect EPP, the prospective successor to EGP, as the participant in the authorized exchanges with Northern, all as more fully set forth in the petition to amend, which is on file with the Commission and open to public inspection.

Applicants indicate that by orders issued on August 31, 1987, and September 28, 1987, in Docket Nos. CP68–5–002 and CP61–132–001, respectively, Northern and EGP were authorized to exchange gas at the trilgates of EGP's hydrocarbon and ethane plants located at Bushton, Kansas, in order to permit EGP to reimburse Northern in kind for volumes lost in EGP's gas processing operations due to fuel and shrinkage.

EPG states that it plans to transfer its interest in such plants, subject to approval of the Securities and Exchange Commission, to EPP. Applicants indicate that to reflect the change of ownership they request that the certificates authorizing the exchanges be amended to reflect EPP rather EGP as the holder of the certificates with Northern. No other changes are proposed.

Comment date: September 8, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. CP89–1954–000]

August 21, 1989.

Take notice that on August 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1954–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation on behalf of Transco Energy Marketing Company (TEMCO) under Texas Gas' blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport, on an interruptible basis, up to a maximum of 75,000 MMBtu of natural gas per day for TEMCO from receipt points located in Arkansas, Illinois, Indiana, Kentucky, Louisiana, offshore Louisiana, Ohio, Texas and offshore Texas to delivery points located in Louisiana. Texas Gas anticipates transporting, on an average day 75,000 MMBtu and an annual volume of 27,375,000 MMBtu.

Texas Gas states that the transportation of natural gas for TEMCO commenced July 1, 1989, as reported in ST89–4202–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Texas Gas in Docket No. CP88–686–000.

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Gas Transmission Corporation

[Docket No. CP89–1955–000]

August 21, 1989.

Take notice that on August 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1955–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for American Central Gas Marketing Company (American Central), under Texas Gas' blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 100,000 MMBtu equivalent of natural gas for American Central, with an estimated average daily quantity of 50,000 MMBtu. It is stated that on an annual basis, American Central estimates a volume of 18,250,000 MMBtu equivalent of natural gas.

Texas Gas states that transportation service for American Central commenced July 1, 1989, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–4203.

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP89–1965–000]

August 21, 1989.

Take notice that on August 16, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas, filed in Docket No. CP89–1965–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service on behalf of Graham Energy Marketing Corporation (Graham) a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6, all as more fully set forth in the request which is one file with the Commission and open to public inspection.

United states that it proposes to transport 123,600 MMBtu on a peak day, 123,600 MMBtu on an average day, and 45,114,000 MMBtu on an annual basis of natural gas on behalf of Graham, and that service pursuant to § 284.223(a) of the Commission's Regulations commenced July 6, 1989, as reported in Docket No. ST89–4262.

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Tennessee Gas Pipeline Company

[Docket No. CP89–1956–000]

August 21, 1989.

Take notice that on August 16, 1989, Tennessee Gas Pipeline Company, (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–1956–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations for authorization to provide a transportation service for General Refractories Company (General) under Applicant's blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated June 5, 1989, it proposes to transport natural gas for General, from points of receipt located offshore Louisiana, offshore Texas, and the States of Louisiana, Mississippi, Texas, New York, and Alabama for redelivery to City of Grayson, Kentucky. The City of Grayson will deliver to the General plant.

The applicant further states that the maximum daily quantity is 3,000

dekatherms under the contract. Service under § 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89-4458.000 (filed August 14, 1989).

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Florida Gas Transmission Company

[Docket Nos. CP68-179-015, CP74-192-012, CP86-704-003]

August 21, 1989.

Take notice that on August 8, 1989,[1] Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket Nos. CP68-179-015, CP74-192-012, and CP86-704-003, (Docket No. CP68-179-015, *et al.*) an amendment to its pending applications in Docket Nos. CP68-179-012 *et al.*, (Phase II Settlement) and Docket No. CP68-179-013 (January 13th Amendment) pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity requesting (1) an allocation of existing capacity (Phase I capacity), an allocation of it proposed expanded capacity (Phase II capacity) and (2) revisions to FGT's proposed construction of Phase II facilities all as more fully set forth in the amendment on file with the Commission and open to public inspection.

FGT states that on October 30, 1987, it submitted the Phase II Settlement [2] and a related amended certificate filing in Docket Nos. CP68-179-012, CP74-192-011 and CP86-704-002 which addressed two central issues: (1) the justification for the proposed facilities which would expand FGT's peak day capacity up to approximately 925,000 Mcf per day (Phase II expansion) and (2) the restructuring of contractual relationships with its customers in order to offer an expansion of its services.

Subsequently, FGT states that on January 13, 1989, that it filed the following four interrelated filings (1) the January 13th Amendment in which it proposed an allocation of Phase I capacity, nominations of annual volumetric entitlements to existing customers, to initiate new small services under proposed Rate Schedule SGS, and other revisions to its FERC Gas Tariff, (2) Docket No. RP89-50-000 in which it proposed a general cost of service rate increase pursuant to section 4(e) of the Natural Gas Act, (3) Docket No. CP89-555-000 in which it requested a blanket transportation certificate under the Commission's Order Nos. 436 and 500, and (4) Docket No. CP89-556-000 in which it requested a blanket certificate to make interruptible sales for resale to others. FGT asserted that these four filings were interrelated, and conditioned its willingness to accept the requested blanket transportation certificate in Docket No. CP89-555-000 on the approval of all four applications.[3]

FGT hereby amends its January 13th Amendment so as to request authorization to provide sales for resale service through its existing Phase I capacity under Rate Schedules G, I, and SGS at the levels of service which are summarized for each customer in Exhibit I to Docket No. CP68-179-015, *et al.* FGT also requests authorization to utilize its transmission facilities to effectuate deliveries of direct sales volumes through its existing Phase I capacity at the levels which are summarized for each direct customer in Exhibit I.

FGT hereby amends the Phase II Settlement and its proposals therein to provide sales for resale service through its proposed Phase II capacity under Rate Schedules G, SGS, and I at the levels of service which are summarized for each customer in Exhibit I to Docket No. CP68-179-015, *et al.* FGT also requests certificate authority to effectuate deliveries of direct sales volumes through its proposed Phase II capacity at the levels which are summarized for each direct customer in Exhibit I. FGT requests that such authority be pregranted so as to become effective upon the in-service date of the proposed Phase II facilities.

FGT states that it would provide firm transportation services under Rate Schedule FTS-1 for shippers pursuant to the blanket certificate FGT requested in Docket No. CP89-555-000. FGT notes that the levels of firm transportation services for firm shippers are also shown in Exhibit I of Docket No. CP68-179-015 *et al.* FGT further explains that the levels of transportation service reflect only incremental levels of firm service and not initial conversion from sales to transportation service. FGT explains that it would effectuate first year conversions which would be elected by the firm and preferred interruptible sales customers listed in Exhibit I pursuant to the proposed Section 16A of the General Terms and Conditions to FGT's FERC Gas Tariff, included in Exhibit P of the January 13th Amendment.

FGT requests authorization to modify the facilities which were proposed in the Phase II Settlement and the related certificate filing. FGT states that its facility modification would eliminate (1) approximately 114.3 miles of looping on delivery laterals in the State of Florida, (2) the 625 horsepower compressor unit a Station No. 33 on the existing Sarasota Lateral, (3) various meter station upgrades and (4) the construction of a new meter station for the delivery of volumes to FPL Energy Services Inc. FGT notes that Exhibit K in Docket No. CP68-179-015, *et al.* sets forth details on the construction and the related costs which FGT now proposes to construct. As shown in Exhibit K, FGT proposes to construct the following lateral lines: (1) Reedy Creek Lateral—6.4 miles of 6-inch line, (2) St. Petersburg Lateral—10.6 miles of 8-inch line, (3) Panama City/Port St. Joe Laterlas—0.1 mile of 6-inch line and 8.0 miles of 6-inch line (4) Lake City Lateral—7.1 miles of 4-inch line, (5) Port Everglades Lateral—5.4 miles and .9 mile of 16-inch and 18-inch line, (6) Marianna Lateral—3.1 miles of 4-inch line. FGT proposes to modify its request to install 2,000 horsepower units at its mainline Compressor Station Nos. 3, 9, 10, 11, 14, 17, 18 and 20. FGT now proposes to install 2,400 horsepower units at each of these stations. FGT asserts that the addition of the 2,400 horsepower units would have a negligible impact on FGT's proposed Phase II design day capacity of 925,000 Mcf.

It is also noted that FGT's Exhibit K in Docket No. CP68-179-015 *et al.* summarizes the proposals for various meter station revisions. It is also noted in Exhibit K that upon Commission authorization FGT would still install an additional 4,000 horsepower of compression at each of its Compressor Station Nos. 12, 15, and 16, an additional 5,000 horsepower of compression at Compressor Station No. 19, and certain piping modification at Compressor Station No. 8.

FGT estimates that the total cost of construction for all of the proposed facilities, as modified above, would be $90,000,000. Further FGT estimates $21,251,900 would be for the construction of the lateral lines and

[1] The application was tendered for filing on July 31, 1989; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until August 8, 1989. § 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

[2] It is noted that on February 22, 1988, (42 FERC ¶63,022) the presiding law judge issued an order certifying that the Phase II Settlement was uncontested. It is further noted that the Phase II Settlement and the related proposals therein are pending Commission.

[3] It is noted that the Commission's May 24, 1989, order in Docket Nos. CP68-179-013, CP89-555-000, CP89-556-000 and RP89-50-000 (47 FERC ¶ 61,253) consolidated the certificate filings into the ongoing formal hearing previously established for Docket No. RP89-50-000. It is further noted, that the Commission did not consolidate FGT's Phase II Settlement with the formal hearing proceeding set forth in Docket No. RP89-50-000, *et al.*

various meter upgrades. FGT states that it is hereby withdrawing its request which was proposed as part of the Phase II Settlement to waive Section 14 of its General Terms and Conditions of its FERC Gas Tariff. Such waiver would have permitted FGT to treat the costs of constructing the delivery lateral expansions on a rolled-in basis for both accounting and rate purposes. Instead, FGT proposes herein to collect a contribution-in-aid of construction from customers receiving new or increased firm service through such facilities.

FGT states that it has contracted with Florida Power & Light Company (FPL) for firm transportation service under Rate Schedule T–4, which was proposed as part of the Phase II Settlement. Further, FGT states that the January 13th Amendment proposed that FPL would have the option to elect to cancel the gas transportation agreement underlying Rate Schedule T–4 and receive alternative service under the proposed Rate Schedule FTS–1. FGT indicates that it would make an additional filing to withdraw its request for authorization of Rate Schedule T–4 in the event FPL makes such election.

Comment date: September 11, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. United Gas Pipe Line Company

[Docket No. CP89–1963–000]

August 21, 1989.

Take notice that on August 16, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1963–000 a request pursuant to Section 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Conoco, Inc. (Conoco), a marketer of natural gas acting as agent for E.I. Dupont de Nemours and Company, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 3,090 MMBtu equivalent of natural gas on a peak day, 3,090 MMBtu equivalent on an average day, and 1,127,850 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for Conoco's account at designated points on United's system in Louisiana and Mississippi and would deliver equivalent volumes at designated points on United's system in Louisiana and Alabama. It is asserted that the transportation service would be effected utilizing existing facilities and would not require any construction of additional facilities. It is explained that the transportation service commenced June 29, 1989, as reported in Docket No. ST89–4260.

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Natural Gas Pipeline Company of America

[Docket No. CP89–1966–000]

August 21, 1989.

Take notice that on August 17, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89–1966–000 a request pursuant to the notice procedure in Sections 157.205 and 284.223(b) of the Commission's Regulations for authorization to transport, on an interruptible basis, up to a maximum of 250,000 MMBtu (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for V.H.C. Gas Systems, L.P. (V.H.C.), a marketer of natural gas. The receipt points are located in New Mexico, Texas, Colorado, Oklahoma, Illinois, Louisiana, Nebraska, Arkansas, Kansas and Iowa and the delivery points are located in Texas, Louisiana, New Mexico, Illinois, Oklahoma, Missouri, Arkansas, Iowa, Kansas and Nebraska. Transportation would be performed under Natural's blanket certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural commenced the transportation of natural gas for V.H.C. on June 1, 1989 at Docket No. ST89–4492–000 for a one hundred and twenty (120) day period ending September 29, 1989, pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86–582–000. Natural proposes to continue this service in accordance with §§ 284.221 and 284.223(b).

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Indiana Ohio Pipeline Company

[Docket No. CP88–178–001]

August 21, 1989.

Take notice that on August 15, 1989, Indiana Ohio Pipeline Company (Indiana Ohio) P.O. Box 1642, Houston, Texas 77251–1642, filed a request with the Commission in Docket No. CP88–178–001. In Docket No. CP88–178–001, Indiana Ohio filed an application which requested, *inter alia,* Commission authorization to construct 110 miles of 20-inch pipeline from Panhandle Eastern Pipe Line Company's (Panhandle) to the pipeline facilities of Texas Eastern Transmission Corporation (TETCO) in Warren County, Ohio. Subsequently, Indiana Ohio has determined that a 30-inch pipeline would be economically and environmentally superior, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Indiana Ohio has requested authorization to install a 30-inch pipeline in lieu of the 20-inch pipeline initially proposed in the above referenced proceeding. Indiana Ohio states that the 200 MMcf/d design capacity of the pipeline will not be affected since the 30-inch line will not require construction of the approximately 6,000 horsepower compression originally proposed. Additionally, Indiana Ohio has made certain minor modifications to the route of its proposed pipeline.

Comment date: September 11, 1989, in accordance with Standard Paragraph F at the end of this notice.

11. Columbia Gas Transmission Corporation

[Docket No. CP89–1929–000]

August 21, 1989.

Take notice that on August 9, 1989, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314 filed in Docket No. CP89–1929–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Columbia to construct and operate 18,950 horsepower of compression and 66.0 miles of pipeline loop at a total estimated cost of $101 million, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to construct and operate the following facilities:

Facilities for November 1, 1990 Service

(1) A 4,000 HP unit addition to the existing Eagle Compressor Station located in Chester County, Pennsylvania.

(2) A 4,000 HP unit addition to the existing Lost River Compressor Station located in Hardy County, West Virginia.

(3) Three 3,200 HP units at the existing Bickers Compressor Station site located in Greene County, Virginia.

(4) Approximately 8.4 miles of 24-inch pipeline loop located in Bedford and Fulton Counties, Pennsylvania.

(5) Approximately 3.7 miles of 24-inch pipeline loop located in Adams County, Pennsylvania.

(6) Approximately 7.7 miles of 36-inch pipeline loop located in Randolph County, West Virginia.

(7) Approximately 8.9 miles of 36-inch pipeline loop located in Randolph County, West Virginia.

(8) Approximately 11.2 miles of 26-inch pipeline loop located in Braxton, Webster, Lewis and Upshur Counties, West Virginia.[1]

(9) Approximately 3.1 miles of 36-inch pipeline loop located in Warren County, Virginia.

(10) Approximately 8.5 miles of 36-inch pipeline loop located in Kanawha and Clay Counties, West Virginia.

[1] This loop segment is being proposed solely to provide for increased reliability of service at the request of Columbia's eastern market customers. Such segment will complete the looping of the remaining single line section of Columbia's system between its interconnection with Columbia Gulf Transmission Company at the Kentucky-West Virginia State Line and Columbia's East Coast main line system north of Baltimore, Maryland.

Facilities for November 1, 1991 Service

(11) Approximately 7.2 miles of 24-inch pipeline loop located in Fayette and Greene Counties, Pennsylvania.

(12) Approximately 7.3 miles of 24-inch pipeline loop located in Lancaster County, Pennsylvania.

(13) A 1,350 HP unit addition to the existing Gettysburg Compressor Station located in Adams County, Pennsylvania.

Columbia states that the facilities proposed will provide it with the capacity to provide 231,918 Dt/d of additional firm services for certain of its customers, as follows:

Class of service	Quantity (Dt/d)	
	11/1/90	11/1/91
Contract demand service (CDS):		
Commonwealth Gas Services, Inc. (East)	1,631	
Eastern Shore Natural Gas Co.	1,309	
Orange & Rockland Utilities, Inc.	23,000	
Virginia Natural Gas Co.	10,000	
Total CDS	35,940	
Firm transportation service (FTS):		
Allied-Signal, Inc.	15,000	
Bluefield Gas Company	1,540	
City of Charlottesville, VA	3,299	
City of Richmond, VA	5,120	
Commonwealth Gas Services, Inc. (East)	8,401	
Commonwealth Gas Services, Inc. (West) [1]	2,610	
Penn Fuel Gas, Inc.	1,777	
Roanoke Gas Co.	5,500	
South Jersey Gas Co.	10,022	
UGI Corporation	20,000	
Virginia Natural Gas Co.	11,140	
Washington Gas Light Co.	36,100	
Bethlehem Steel Company	15,500	
General Motors Corporation	4,500	
Total FTS	140,509	
Winter service (WS):		
Commonwealth Gas Services, Inc. (East)	9,499	
Eastern Shore Natural Gas Co.	6,832	
Total WS	16,331	
Firm storage service (FSS):		
City of Charlottesville, VA	800	1,450
City of Richmond, VA		4,729
Commonwealth Gas Services, Inc. (East)	6,522	
Commonwealth Gas Services, Inc. (West) [1]	143	
Delmarva Power & Light Co.	8,040	2,070
Eastern Shore Natural Gas Co.	800	200
Roanoke Gas Co.	2,107	1,777
South Jersey Gas Co.	8,400	2,100
Total FSS	26,812	12,326

[1] Effective July 1, 1989, Columbia Gas of Virginia, Inc. was merged into Commonwealth Gas Services, Inc. The service area of Columbia Gas of Virginia, Inc. will be operated by Commonwealth Gas Services, Inc. as Commonwealth Gas Services, Inc. (West).

Columbia states that the additional firm natural gas services are pursuant to and in implementation of the Stipulation and Agreement filed with the Commission in Docket No. RP86-168-000, *et al.*, on June 29, 1989, and the Commission has been requested to approve the Stipulation and Agreement to be effective November 1, 1989.

Comment date: September 11, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

12. United Gas Pipe Line Company

[Docket No. CP89-1959-000]

August 21, 1989.

Take notice that on August 16, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas

77251, filed in Docket No. CP89–1959–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform a firm transportation service for Arkla Energy Marketing Company (Arkla), under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that pursuant to a transportation service agreement dated October 26, 1988, as amended by a letter agreement dated March 8, 1989, it proposes to receive up to 200,000 Mcf per day from Arkla at specified points located both onshore and offshore Louisiana, Texas, and Mississippi and redeliver equivalent volumes at specified points located in the states of Texas, Louisiana, Florida, Alabama, and Mississippi. United indicates that in the event of failure of deliveries to receipt or delivery points for firm service, Arkla may request authorized overrun transportation if, in United's sole judgment, the capacity of its system or part thereof would permit such receipt, transportation, and delivery without impairing the ability of United to meet its other delivery obligations. It is indicated that United would receive the overrun volumes at specified points located in Texas and in onshore and offshore Louisiana and redeliver the volumes at specified points located in the states of Alabama, Florida, Mississippi, and Louisiana. United estimates peak day, average day, and annual volumes of 206,000 million Btu, 206,000 million Btu, and 75,190,000 million Btu, respectively. It is indicated that on June 14, 1989, United initiated a 120-day transportation service for Arkla under § 284.223(a) as reported in Docket No. St89–4075–000.

United further states that no facilities need be constructed to implement the service. United states that the contract expires three years from the date of initial transportation. United proposes to charge rates and abide by the terms and conditions of its Rate Schedule FTS.

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. United Gas Pipe Line Company

[Docket No. CP89–1961–000]

August 21, 1989.

Take notice that on August 16, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1961–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for PSI, Inc. (PSI), a marketer, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that pursuant to a transportation service agreement dated March 14, 1989, as amended on May 9, 1989, it proposes to receive up to 150,000 Mcf per day from PSI at specified points located in the states of Texas, Mississippi, Alabama, Florida, as well in onshore and offshore Louisiana and redeliver equivalent volumes at specified points located in the states of Florida, Louisiana, Mississippi, and Alabama. United estimates peak day and average day volumes of 154,500 million Btu and annual volumes of 56,392,500 million Btu. It is indicated that on July 3, 1989, United initiated a 120-day transportation service for PSI under § 284.223(a) as reported in Docket No. ST89–4278–000.

United further states that no facilities need be constructed to implement the service. United states that the service would continue until terminated on 30 days written notice. United proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Great Lakes Gas Transmission Company

[Docket No. CP89–1898–000]

August 21, 1989.

Take notice that on August 2, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP89–1898–000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity to provide additional firm gas transportation service of 831,000 Mcf per day for TransCanada Pipe Lines Limited (TransCanada), and 43, 700 Mcf per day for ANR Pipeline Company (ANR), and to construct and operate facilities required to provide such service, all as more fullly set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Great Lakes states that the existing TransCanada-Great Lakes Gas Transportation Contract dated September 12, 1967, as amended, currently provides for firm transportation by Great Lakes of up to a maximum of 1,405,000 Mcf per day of volumes from a point of interconnection between the facilities of Great Lakes and TransCanada on the International Boundary at Emerson, Manitoba (Emerson Interconnection), to points on the International Boundary located at Sault Ste. Marie and St. Clair Interconnections. Great Lakes states that TransCanada has requested that the additional 831,000 Mcf per day be transported by Great Lakes from the Emerson Interconnection to the St. Clair Interconnection. To provide this service, an Amendatory Agreement dated July 28, 1989 (Amendment) has been executed by the parties, which provides for such increase to a total of 2,236,000 Mcf per day, which is expected to commence November 1, 1991. A second increase of 166,000 Mcf per day is expected to commence on November 1, 1992.

It is stated that ANR and Great Lakes have entered into a Transportation Service Agreement (ANR Service Agreement) dated July 28, 1989, under which Great Lakes has agreed to transport up to 43,700 Mcf per day on a firm basis, for ANR, from the Emerson Interconnection to an existing point of interconnection between the facilities of ANR and Great Lakes, located at Fortune Lake, Michigan (Fortune Lake Delivery Point). ANR has advised Great Lakes that it will receive these volumes into the ANR Pipeline system at Fortune Lake Delivery Point for alternate deliveries to the joint subsidiaries of Kamine Engineering and Mechanical Contracting, Inc. and the Besicorp Group, Inc. (Cogen Developers), who are constructing gas-fired cogeneration projects in South Glen Falls, South Corning, and Holtsville, New York.

Great Lakes states ANR will provide transportation of the subject volumes from the Fortune Lake Delivery Point to a proposed point of interconnection between the facilities of ANR and CNG Transmission Corporation (CNG) located at Lebanon, Ohio (Lebanon Delivery Point). The Cogen Developers are entering into arrangements with CNG and other entities for transportation of the volumes from the Lebanon Delivery Point to the sites for the cogeneration projects.

It states that the proposed service for ANR is expected to commence on November 1, 1991, with a daily firm contract quantity of 14,200 Mcf per day, which will be increased by 29,500 Mcf, to 43,700 Mcf, commencing on or about November 1, 1992.

Great Lakes further states that TransCanada and ANR have advised Great Lakes that their respective transportation arrangements are primarily required to satisfy the market needs of the U.S. Northeast. A substantial portion of the proposed services will be utilized in conjunction with the Iroquois, Champlain, and ANR–Lebanon projects, previously determined by the Commission to be discrete, its "Order Ruling on Discreetness of Additional Northeast Projects and Establishing Procedures", issued January 12, 1989, in Docket No. CP87–451–016, 46 FERC ¶ 61,012 (1989).

Great Lakes states that, in order to provide the proposed transportation services, Great Lakes proposes to construct and/or install (1) thirty-three loop sections, totalling 68.5 miles of 36-inch diameter pipe and 465.1 miles of 42-inch diameter pipe; (2) seven compressor units of 27,000 horsepower class rating (3) twenty-five aerodynamic assemblies and station piping modifications at various Great Lakes' compressor stations; (4) an addition to Great Lakes' existing meter station located at St. Clair, Michigan; and (5) one aftercooler at an existing compressor station, as more fully explained in the application.

The rate for transportation of the volumes for TransCanada will be the effective rate under rate schedule T–4 of the Original Volume No. 2 of Great Lakes' FERC Gas Tariff, applicable for deliveries at the St. Clair Interconnection. The rate for ANR will be determined from the components of the Base Tariff Rates of a comparable, long-term transportation arrangement, applicable to volumes being transported from the Emerson Interconnection to Great Lakes' central zone.

Comment date: September 11, 1989, in accordance with Standard Paragraph F at the end of this notice.

15. United Gas Pipe Line Company

[Docket No. CP89–1960–000]

August 21, 1989.

Take notice that on August 16, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1960–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Seagull Marketing Services (Seagull), a marketer, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that pursuant to a transportation service agreement dated October 1, 1989, as amended on May 19, 1989, May 22, 1989, and June 15, 1989, it proposes to receive up to 500,000 Mcf per day from Seagull at specified points located in the states of Texas, Louisiana, Mississippi, Alabama, and Florida and redeliver equivalent volumes at specified points located in the states of Texas, Louisiana, Mississippi, and Alabama. United estimates peak day and average day volumes of 515,000 million Btu, and annual volumes of 187,975,000 million Btu. It is indicated that on June 29, 1989, United initiated a 120-day transporation service for Seagull under § 284.223(a) as reported in Docket No. ST89–4333–000.

United further states that no facilities need be constructed to implement the service. United states that the service would continue until terminated on 30 days written notice. United proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: October 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Eastern Shore Natural Gas Company

[Docket No. CP89–1024–001]

August 21, 1989

Take notice that on August 17, 1989, Eastern Shore Natural Gas Company (Eastern Shore), P.O. Box 615, Dover, Delaware 19903–0615, filed in Docket No. CP89–1024–001, as supplemented on August 17, 1989, a petition to amend Docket No. CP89–1024–000, which is currently pending before the Commission, so as to select Option A for the proposed 10-inch pipeline segment from just south of the C & D Canal to just south of Clayton, Delaware (Middletown Loop) as its final routing, to revise the length of the proposed Middletown Loop from 19.9 miles to 20.1 miles, revise its firm gas supply "mix" from Columbia Gas Transmission Corporation (Columbia), revise the increased service levels requested by certain of Eastern Shore's customers, provide a new storage service pursuant to a new rate schedule, Rate Schedule FSS, revise Exhibit K and revise the location of its proposed Dover Automatic Valve/Regulator Station within Dover, Delaware, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Eastern Shore states that in Docket No. CP89–1024–000, it proposed two alternate routes for the 10-inch pipeline segment referred to as the Middletown Loop. Eastern Shore states that it has determined that Option A (Railroad Route) presents the least environmental impact and is the least expensive alternative, therefore, Eastern Shore states that it is no longer considering Option B (Road Route) for the Middletown Loop.

Eastern Shore states that in Docket No. CP89–1024–000, the proposed length of the Middletown Loop was 19.9 miles. Due to environmental considerations, Eastern Shore now proposes to revise the length of the Middletown Loop 0.2 mile, thus making the total length of this segment 20.1 miles.

Eastern Shore states that in Docket No. CP89–1024–000, it proposed to increase contract demand and increase or decrease firm storage service to certain existing cutomers by seeking an increase of firm supply from Columbia in the form of contract demand service (CDS) and winter service (WS) in order to satisfy the proposed new customer demands on its system for the 1989–90 and 1990–91 winter seasons. Eastern Shore now states that because of intervening factors, it proposes to make certain revisions in its supply "mix" requested from Columbia. Eastern Shore states that Columbia's Offer of Settlement filed in Docket No. RP86–168–000, *et al.*, now gives Eastern Shore the option of a 30-day storage service under Rate Schedule FSS which would permit Eastern Shore to purchase and inject third-party gas into storage. Eastern Shore explains that because this new service is offered, Eastern Shore can now reduce its request for WS as well as its request for CDS service from Columbia. Eastern Shore states that by offsetting the reduction in WS service with service under Columbia's proposed FSS rate schedule Eastern Shore is still able to satisfy its customers' demands for increased service levels.

Eastern Shore states that on the basis of its FSS arrangement with Columbia, it proposes to implement a new 30-day firm storage service, rate Schedule CFSS, of its own for its customers. Eastern Shore states that the CFSS will consist of a demand charge and a commodity charge. It is stated that the CFSS demand charge is designed on the same basis as Eastern Shore's currently existing GSS, LSS, CWS and LGA demand rates. It is stated that an increment of $2.7752 per dekatherm, designed to recover the total costs allocated to jurisdictional storage services under the transmission function

after Phase I facilities is added to the corresponding Columbia rate. It is stated that an increment of $2.7752 per dekatherm, designed to recover the total costs allocated to jurisdictional storage services under the transmission function after Phase II facilities is added to the corresponding Columbia rate as shown below:

	CFSS rate schedule	Proposed Columbia rate/dt	Eastern Shore indicated rate/dt
Phase I	$3.462	$2.7752	$6.2372
Phase II	3.462	2.5490	6.0110

Eastern Shore states that the commodity rate will consist of a capacity charge, an injection charge and a withdrawal charge. Eastern Shore also states that such charges are designed to be equivalent to Columbia's corresponding rates as shown below:

CFSS rate schedule	Proposed Columbia rate/dt	Eastern Shore indicated rate/dt
Capacity	$0.0529	$0.0529
Injection	0.0048	0.0048
Withdrawal	0.0048	0.0048

In addition, Eastern Shore states that due to the revision of its gas supply "mix" from Columbia and Eastern Shore's proposed FSS storage service, certain customers of Eastern Shore have agreed to modify their original requests for service.

Eastern Shore also states that in order to eliminate the impact of its proposed Dover Automatic Valve/Regulator Station upon the residential community, Eastern Shore has decided to revise the location of the proposed station from a location near the intersection of Wyoming Ave. and New Burton Road in Dover, Delaware, to a location 0.8 mile north at the intersection of Bank Lane and West Street in Dover, Delaware. In addition, Eastern Shore states that it is revising Exhibit K of Docket No CP89-1024-000 concerning the installation of the Dover Station from $62,003 to $63,0003.

Comment date: September 5, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20254 Filed 8-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM89-17-20-000, TM89-16-20-001, TM89-14-20-001]

Algonquin Gas Transmission Co.; Proposed Change in FERC Gas Tariff

August 22, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 16, 1989, tendered for filing, to its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Proposed to be effective, August 1, 1989

Twenty-eighth Revised Sheet No. 205
Substitute Seventeenth Revised Sheet No. 214

Proposed to be effective, September 1, 1989

Thirty-fifth Revised Sheet No. 203

Algonquin states that pursuant to Section 7 of Rate Schedule F-2, it is filing Thirty-fifth Revised Sheet No. 203 to concurrently track rate changes made by its pipeline supplier CNG Transmission Corporation in the service underlying Algonquin's Rate Schedule F-2. Such changes decrease the demand charge by 81.5 cents per MMBtu while increasing the commodity charge by 2.00 cents per MMBtu.

Additionally, Algonquin states that it is filing Twenty-eighth Revised Sheet No. 205 for the sole purpose of bringing forward into a previously filed Sheet No. 205 the effect of the Commission's acceptance of Algonquin's filing in Docket Nos. CP84-654-023 and CP86-480-004 dated August 7, 1989. Such filing and acceptance reduces Algonquin's demand handling charge for Rate Schedule F-4 from $22.756 to $16.725, a reduction of $6.031 MMBtu.

Algonquin further states that it is filing Substitute Seventeenth Revised Sheet No. 214 (Rate Schedule SS-III) for the sole purpose of bringing forward the revised injection rate of 5.05 cents per MMBtu (a 0.02 cent reduction) which it filed for in Docket No. TM89-15-20-000 on July 31, 1989 into the previously filed and accepted Seventeenth Revised Sheet No. 214 (Docket No. TM89-14-20-000, July 21, 1989).

Algonquin notes that copies of this filing were served upon affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 29, 1989. Protest will be

considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20258 Filed 8-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2179-003]

Merced Irrigation District; Extension of Time

August 22, 1989.

On August 18, 1989, Merced Irrigation District (MID) filed a motion for an extension of time to file a status report as required by Ordering Paragraph (B) of the Commission's Order on Rehearing issued May 26, 1989, in the above-docketed proceeding. In its motion, MID states that both MID and the U.S. Fish and Wildlife Service agree that additional time is needed to pursue negotiations and to satisfy the reporting requirements of the Commission's order.

Upon consideration, notice is hereby given that an extension of time for filing a status report is granted to and including October 23, 1989, in the above-docketed proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20256 Filed 8-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1514-000]

Mitco Pipeline Co.; Request for Declaratory Order and Motion To Vacate Certificates

August 21, 1989.

On May 30, 1989, Mitco Pipeline Company (Mitco) filed a motion to vacate certificates of public convenience and necessity previously issued to Mitco by the Federal Energy Regulatory Commission in 1981 and 1982 authorizing the construction and operation of an offshore pipeline and related facilities, on the ground that such facilities are exempt gathering facilities under section 1(b) of the Natural Gas Act. The motion will be processed as a petition for a declaratory order.

Mitco states that it uses the pipeline involved, which is 6 inches in diameter, only to transport casinghead gas for Transcontinental Gas Pipe Line Corporation (Transco). Mitco receives the gas from a producer, Mitchell Energy Corporation (Mitchell), on OCS Block 189, Galveston Area (Federal Domain), transports it 8.5 miles to Texas State Tract 214, and delivers it here to an intrastate pipeline owned by Seagull Pipeline Corporation (Seagull). Subsequent to Mitco's handling of the gas at this point, it is transported onshore by Seagull and delivered to Houston Pipe Line Company for ultimate delivery to Transco. Mitco states that Mitchell provides minor compression at Block 189 and all separation and dehydration functions at locations on Block 189 and also onshore, but that Mitco provides no compression or processing services.

Any person desiring to be heard or to protest Mitco's request should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, not later than 30 days following publication of this notice in the **Federal Register.** All protests will be considered by the Commission, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of Mitco's request are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-20255 Filed 8-28-89; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

August 23, 1989

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0028.

Title: Application for Authorization in the Auxiliary Broadcast Services.

Form No.: FCC 313.

Action: Revision.

Respondents: State or local government, Business (including small business).

Frequency of Response: On occasion.

Estimated Annual Burden: 2,500 Responses, 5 hours each (average).

Needs and Uses: Filing is required to apply for remote pickup, aural microwave, television microwave, and other auxiliary broadcast stations. The data is used to determine if proposal meets statutory requirements, and to ensure that no interference will be caused to other authorized stations.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-20343 Filed 8-28-89; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for 1 new FM station and 2 new AM stations:

I.

Applicant	File No.	MM Docket No.
A. Northland Broadcasters, A Limited Partnership; Anchorage, Alaska.	BPH-851231MA	89-359
B. Knik Broadcasting Corporation; Anchorage, Alaska.	BPH-860102MG	.....
C. A.A. Radio Partnership, A Limited Partnership; Anchorage, Alaska.	BPH-860102MM	.....
D. Aleut Broadcasting, Inc.; Anchorage, Alaska.	BPH-851231MB (Dismissed Herein)	.....
E. Seward Radio, Ltd.; Anchorage, Alaska.	BPH-860102MF (Dismissed Herein)	.....
F. Abacus Broadcasting; Anchorage, Alaska.	BPH-860102MH (Dismissed Herein)	.....
G. Bobby Duffy; Anchorage, Alaska.	BPH-860102MI (Dismissed Herein)	.....
H. George P. Charles; Anchorage, Alaska.	BPH-860210MN (Previously Dismissed)	

Issue heading and Applicant(s)

1. Environmental, C
2. Air Hazard, B,C
3. Comparative, A,B,C
4. Ultimate, A,B,C

II.

Applicant	File No.	MM Docket No.
A. Childress Radio Company; Yadkinville, NC.	BP-870331BK	89-357
B. Triad Network, Inc.; Greensboro, NC.	BP-870928AA	.....
C. Greensboro Communications (Dismissed herein); Greensboro, NC.	BP- 870429AE	.....

Issue heading and applicants

1. 307(b), A, B
2. Contingent Comparative, A, B
3. Ultimate, A, B

III.

Applicant	File No.	MM Docket No.
A. Michael B. Glinter; Winston-Salem, NC.	BP-860331A0	89-356
B. Smith Mountain Lake Radio; Moneta, VA.	BP-880126AB	.....

Issue heading and applicants

1. Environmental Impact, A
2. 307(b), All Applicants
3. Contingent Comparative, All Applicants
4. Ultimate, All Applicants

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 Fed. Reg. 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 89-20295 Filed 8-28-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Board of Visitors for the National Fire Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Dates of Meeting: October 15-17, 1989.

Place: National Emergency Training Center, G Bldg., 2nd Floor Conference Room, Emmitsburg, MD 21727.

Time: October 15—2:00 p.m. to 5:00 p.m., October 16—8:30 a.m. to 5:00 p.m., October 17—8:30 a.m. to Agenda Completion.

Proposed Agenda: Old Business, New Business; Tour/Inspection of Facilities

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, Office of Training, 16825 South Seton Avenue, Emmitsburg, Maryland 21727 (telephone number, 301-447-1123) on or before October 2, 1989.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: August 10, 1989.

Dave McLoughlin,

Director, Office of Training.

[FR Doc. 89-20306 Filed 8-28-89; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200279

Title: Port of Galveston Day Cruise Operating Agreement.

Parties: Board of Trustees of the Galveston Wharves (Port). Carter-Green-Redd, Inc., d/b/a, Pride Cruise Lines (Pride).

Synoposis: The Agreement provides that the Port will grant Pride the exclusive right to operate a Day Cruise Ship from the Port of Galveston for a term of five years. The Port will provide a berth, parking lot, passenger service terminal and related services at Pier 21. Pride will pay dockage at fifty percent of rates published in the Galveston Wharves Tariff Circular 4-D. Pride also guarantees the Port annually, a minimum fee of $500,000 or six percent of the minimum $59.00 ticket price, whichever is greater.

Agreement No.: 224-010807-004

Title: City of Long Beach Terminal Agreement.

Parties: City of Long Beach Maersk, Inc.

Synopsis: The Agreement assigns the use of a crane erected at Pier J. Berths 243 and 244, to Maersk, Inc., for a period ending June 30, 1998.

By order of the Federal Maritime Commission.

Dated: August 23, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-20238 Filed 8-28-89; 8:45 am]

BILLING Code 6730-01-M

FEDERAL RESERVE SYSTEM

BancFirst Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are

considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 18, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *BancFirst Corp.*, Zanesville, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Zanesville, Zanesville, Ohio.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690.

1. *Pioneer Bancorp, Inc.*, Chicago, Illinois; to merge with River Associates Bancorp, Inc., River Gove, Illinois, and thereby indirectly acquire River Grove Bank and Trust Company River Grove, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Midland States Bancorp, Inc.*, Effingham, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Effingham State Bank, Effingham, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Fortune 44 Company*, Boulder, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Newberry Bancorp, Inc., Newberry, Michigan.

2. *Lincoln Holding Company*, Hankinson, North Dakota; to become a bank holding company by acquiring 95.07 percent of the voting shares of Lincoln State Bank, Hankinson, North Dakota.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *OMNIBANCORP*, Denver, Colorado; to acquire 100 percent of the voting shares of OMNIBANK Denver, Denver, Colorado.

F. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Palm Desert Investments*, Indian Wells, California; to become a bank holding company by acquiring at least 25 percent of the voting shares of Palm Desert National Bank, Palm Desert, California.

Board of Governors of the Federal Reserve System, August 23, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-20277 Filed 8-28-89; 8:45 am]

BILLING CODE 6210-01-M

Gary D. Kilpatrick; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 12, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Gary D. Kilpatrick*, Boaz, Alabama, and Horace E. Kilpatrick, Opelika, Alabama; to each increase their total ownership to 26.80 percent of the voting shares of First Boaz BanCorporation, Boaz, Alabama, and thereby indirectly acquire First Bank of Boaz, Boaz, Alabama, as the result of a stock redemption.

2. *Henry J. Langsenkamp, III*, Ft. Lauderdale, Florida; to acquire an additional 7.08 percent of the voting shares of First Union Bancorp, Blairsville, Georgia, for a total of 13 percent, and thereby indirectly acquire First National Bank of Union County, Blairsville, Georgia.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Ed Berrong*, Weatherford, Oklahoma; to acquire an additional 0.66 percent of the voting shares of First National Bancshares of Weatherford, Inc., Weatherford, Oklahoma, for a total of 16.34 percent, and thereby indirectly acquire First National Bank and Trust Company, Weatherford, Oklahoma.

2. *Karl Blade*, Miami, Oklahoma; to acquire 19.6 percent of the voting shares of Guaranty Bancorporation, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Guaranty National Bank, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, August 23, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-20278 Filed 8-28-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 080789 AND 81889

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN NO.	Date terminated
Tsumura & Co., Minnetonka Corporation, FMG Holdings, Inc.	89-2229	08/07/89
Craig Corporation, Reading Company, Reading Company	89-2238	08/07/89
Peridot Holdings, Inc., The Dow Chemical Company, Essex Industrial Chemicals, Inc.	89-2242	08/07/89
S.A. Brewing Holdings Ltd., Nortek, Inc., Bradford-White Corporation	89-2371	08/07/89
Bardon Group PLC, Simeone Corporation, Simeone Corporation	89-2328	08/08/89
MEDIQ Incorporated, Franklin Investment Co., Inc., Franklin Investment Co., Inc.	89-2356	08/08/89
Kyocera Corporation, Blackstone Capital Partners L.P., Elco Corporation, Elco International K.K. et al.	89-2360	08/08/89
Kyocera Corporation, Wasserstein, Perella Partners, L. P., Elco Corporation, Elco International K.K. et al.	89-2361	08/08/89
Page Mill Holdings, L.P., Nelson Peltz, Rowe International, Inc.	89-2269	08/09/89
Cencom Cable Associates, Inc., Robert S. Howard, Falcon Communications, Falcon TV of Alhambra, et al.	89-2348	08/09/89
Cencom Cable Associates, Inc., Donald W. Reynolds, Falcon Communications, Falcon TV of Alhambra, et al.	89-2349	08/09/89
George N. Gillett, Jr., Doskocil Companies Incorporated, Wilson Foods Corporation, Wilson Intangible	89-2226	08/10/89
Henry L. Hillman, Kenetech Corporation, Kenetech Corporation	89-2363	08/10/89
Henry L. Hillman, Kenetech Corporation, Kenetech Corporation	89-2364	08/10/89
Berkshire Hathaway Inc., The Gillette Company, The Gillette Company	89-2379	08/10/89
The Henley Group, Inc., The Wheelabrator Group, Inc., Resco Holdings Inc.	89-2225	08/11/89
Audiofina, S.A., Newco-Joint Venture, Newco-Joint Venture	89-2268	08/11/89
Prime Motor Inns, Inc., New World Development Company Limited, RI Acquiring Corp.	89-2312	08/11/89
Procordia AB, Richard Gibian, Sr., American Candy Manufacturing Company, Inc.	89-2334	08/11/89
Marion Laboratories, Inc., The Dow Chemical Company, Merrill Dow Pharmaceuticals Inc.	89-2337	08/11/89
E.I. du Pont de Nemours and Company, Enerfin Partners I Limited Partnership, Enerfin Partners I Limited Partnership	89-2340	08/11/89
The Dow Chemical Company, Marion Laboratories, Inc., Marion Laboratories, Inc.	89-2341	08/11/89
The Dow Chemical Company, Marion Laboratories, Inc., Marion Laboratories, Inc.	89-2342	08/11/89
Anadarko Petroleum Corporation, Parker & Parsley Development Partners, L.P., Parker & Parsley Petroleum Company	89-2354	08/11/89
Time Warner Inc., Everett I. Mundy, Tele-Media Company of Southern Ohio	89-2372	08/11/89
Time Warner Inc., Robert E. Tudek, Tele-Media Company of Southern Ohio	89-2373	08/11/89
Time Warner Inc., Telemedia Company of Columbia, L.P., Telemedia Company of Columbia, L.P.	89-2377	08/11/89
The Stanley Works, Edward D. Priest, The Parker Group, Inc.	89-2378	08/11/89
PepsiCo, Inc., Mr. James J. Marks, Sr., Martime's Corporation and Colonel Sanders Kentucky	89-2381	08/11/89
Payment Services Company—U.S., McDonnell Douglas Corporation, TeleCheck Services, Inc., and TeleCheck Washington, Inc.	89-2383	08/11/89
Equity Holdings Limited, Robert S. Jepson, Jr., The Jepson Corporation	89-2384	08/11/89
MAPCO Inc., National Convenience Stores Incorporated, National Convenience Stores Incorporated	89-2387	08/11/89
Infotechnology, Inc., Hadron, Inc., Hadron, Inc.	89-2391	08/11/89
ASK Computer Systems, Inc., Chatham Trust, Data 3 Systems, Inc.	89-2406	08/11/89
Harlin Holdings Pty. Limited, Elders IXL Limited, Elders IXL Limited	89-2413	08/11/89
JWP Inc., Computer Applications Corporation, Computer Applications Corporation	89-2231	08/12/89
Tele-Communications, Inc., QVC Network, Inc., QVC Network, Inc.	89-2375	08/14/89
Salzgitter AG, Mr. Norman Blachford, H.L. Blachford, Inc.	89-2345	08/15/89
Saxon Oil Company, Angeles Corporation, Quinoco Oil & Gas, Inc. and Quinoco Resources, Inc.	89-2368	08/15/89
Albertson's, Inc., American Stores Company, Alpha Beta, Inc.	89-2333	08/17/89
Martin Marietta Corporation, First Chicago Corporation, Georgia Marble Aggregates Corporation	89-2352	08/17/89
Alfred Dee Hughes, Shawmut National Corporation, Shawnut First Mortgage Corp.	89-2464	08/17/89
McCown De Leeuw & Co., APL Corporation, Riviera Cabinets Inc. & Tennessee Cabinet Company, Inc.,	89-2308	08/18/89
Alco Standard Corporation, Inter-City Paper Company, Inter-City Paper Company	89-2327	08/18/89
Laws International Holdings Limited, Marcia and Lawrence Israel, Judy's, Inc.	89-2355	08/18/89
Stone Container Corporation, Stone Forest Industries, Inc., Stone Forest Industries, Inc.	89-2358	08/18/89
Kimco Development Corporation, Douglas A. Horne and Brenda P. Horne, Horne Properties, Inc.	89-2390	08/18/89
Charles Nirenberg and Janet Nirenberg, Dairy Mart Convenience Stores, Inc., Dairy Mart Convenience Stores, Inc.	89-2405	08/18/89
Arthur M. Goldberg, Di Giorgio Corporation, Di Giorgio Corporation	89-2407	08/18/89
Meville Corporation, Channel Home Centers, Inc., Channel Home Centers, Inc.	89-2412	08/18/89
The Oklahoma Publishing Company, Cencom Cable Associates, Inc., Cencom Cable Television, Inc.	89-2415	08/18/89
John Hancock Mutual Life Insurance Company, Koll CM Associates, a California Limited Partnership, Koll CM Associates, a California Limited Partnership	89-2420	08/18/89
The Nomura Securities Co., Ltd., Saul P. Steinberg, Reliance Figueroa Associates	89-2423	08/18/89
Korean Air Lines Co., Lt., The Nomura Securities Co., Ltd., ELAH Property Corporation	89-2427	08/18/89
Vermont American Corporation, Clairson International Corporation, Clairson International Corporation	89-2428	08/18/89
Arvin Industries, Inc., TI Group plc, A.P. Amortiguadores SA	89-2441	08/18/89
UGI Corporation, R. S. Martin, Sr., West Florida LP Gas Company and Best L-P Gas, Inc.	89-2444	08/18/89
W.E.K. Beheer B.V., Marlis, S.A., three subsidiaries of Hachette Publishing, Inc.	89-2452	08/18/89
International Business Machines Corporation, Policy Management Systems Corporation, Policy Management Systems Corporation	89-2453	08/18/89
Chips and Technologies, Inc., Scientific Micro Systems, Inc., Scientific Micro Systems, Inc.	89-2463	08/18/89
H & R Block, Inc., MicroBilt Corporation, MicroBilt Corporation	89-2465	08/18/89
P. E. Sadler, H & R Block, Inc., H & R Block, Inc.	89-2467	08/18/89
James Crean plc., Theodore F. Twardzik, Ateeco, Inc.	89-2471	08/18/89
Nichirei Corporation, The Berelson Company, The Berelson Company	89-2473	08/18/89
Gerald W. Schwartz, Ralston Purina Company, Bremner, Inc.	89-2477	08/18/89

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 89-20296 Filed 8-28-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Small Business Participation in Targeted Industries

AGENCY: Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice invites public comments on the Department of Health and Human Services proposed initiatives that will expand small business participation in 10 industry categories pursuant to Title VII of the "Business Opportunity Development Reform Act of 1988", Pub. L. 100–656.

DATES: Comments are due in writing on or before Sept. 29, 1989.

ADDRESS: Interested parties should submit written comments to: Department of Health and Human Services, Office of Small and Disadvantaged Business Utilization, 200 Independence Avenue, SW., Humphrey Bldg., Room 517D, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clinkscales, Director, OSDBU, telephone (202) 245–7300.

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (DHHS) has been designated as one of the nine procuring agencies to implement Title VII of the "Business Opportunity Development Reform Act of 1988", Pub. L. 100–656. The program seeks to demonstrate whether the competitive capabilities of small business firms in certain industry groups will enable them to successfully compete on an unrestricted basis for Federal contracts. Additionally, the Program attempts to demonstrate whether the use of targeted goaling and management techniques by procuring agencies, in conjunction with the Small Business Administration (SBA), will expand small business participation in selected industries that have historically been under-represented by small businesses despite an adquate number of small business sources.

The following are the selected industries which DHHS has targeted for participation in the program.

TARGETED INDUSTRY CATEGORIES FOR DHHS

Product service code	SIC Codes	Description
G004	8742	Counseling/training/ social rehabilitation services.
J074	7699	Maintenance, repair and rebuilding of equipment (office machines, text processing system and visible record equipment).
K099	7699	Modification of equipment (miscellaneous).

TARGETED INDUSTRY CATEGORIES FOR DHHS—Continued

Product service code	SIC Codes	Description
Q201	8099	General health care services.
	8742	
R406	8742	Policy review/ development services.
R497	7299	Personal services.
6505	2833	Drugs and biologics.
	2834	
	2835	
	2836	
7045	3572	ADP Supplies.
	3577	
	3579	
7110	5021	Office furniture.
7510	5112	Office supplies.

Initiatives for Departmental Enhancement of Small Business Participation in the Ten (10) Targeted Industry Categories

The following plan has been developed for expanding small business participation in the ten (10) targeted industry categories. This plan prescribes the efforts which the Department of Health and Human Services (DHHS) must undertake in the acquisition process. This will be the basis for a valid demonstration to determine if special management initiatives will enhance the participation of small businesses in selected industries.

—Broader distribution and utilization of DHHS' advanced procurement plans
—Issuance of sources sought announcements for small businesses
—Expand the utilization of 8(a) contracting mechanism
—Expand the utilization of small business set-asides
—Breakouts on selected acquisitions for small business participation
—Promote teaming and joint ventures by and among small businesses
—Expand outreach efforts to locate small businesses
—Optional inclusion of small purchase data
—Conduct training sessions for departmental contracting officials and small and disadvantaged utilization specialist
—Monitoring of goal attainment

Dated: August 24, 1989.

Richard Clinkscales,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 89–20319 Filed 8–28–89; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 86F–0362]

Betz Laboratories; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the petition filed by Betz Laboratories to provide for the safe use of a copolymer of methacrylic acid and acrylic acid as an active polymer in boiler water for use in contact with food. The previous filing notice is amended to indicate that Betz Laboratories no longer seeks to amend the regulations to use this copolymer as a boiler water additive in contact with food, but rather as a component of paper and paperboard in contact with aqueous and fatty foods.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 17, 1986 (51 FR 37074), FDA published a notice that a petition (FAP 6A3957) had been filed by Betz Laboratories, Somerton Rd., Trevose, PA 19047, proposing that § 173.310 *Boiler water additives* (21 CFR 173.310) be amended to provide for the safe use of a copolymer of methacrylic acid and acrylic acid as an active polymer in boiler water. Subsequently, Betz Laboratories amended the petition to indicate that they no longer were seeking to amend § 173.310 to include the use of this copolymer as a boiler water additive, but rather are proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of this copolymer of methacrylic acid and acrylic acid.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 18, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-20297 Filed 8-28-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89F-0331]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2,3,4,5-tetrachloro-6-cyanobenzoic acid, methyl ester reaction products with *p*-phenylenediamine and sodium methoxide as a colorant in all food-contact polymers.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4158) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532-2188. The petition proposes to amend § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of 2,3,4,5-tetrachloro-6-cyanobenzoic acid, methyl ester reaction products with *p*-phenylenediamine and sodium methoxide as a colorant in all food-contact polymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: August 18, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-20298 Filed 8-28-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89C-0327]

Storz Ophthalmics, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Storz Ophthalmics, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of D&C Green No. 6 in polymethylmethacrylate used for the support haptics of intraocular lenses.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 9C0219) has been filed by Storz Ophthalmics, Inc., 1365 Hamlet Ave., Clearwater, FL 34616, proposing that § 74.3206 *D&C Green No. 6* (21 CFR 74.3206) of the color additive regulations be amended to provide for the safe use of D&C Green No. 6 in polymethylmethacrylate used for the support haptics of intraocular lenses.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: August 18, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-20299 Filed 8-28-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89P-0329]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to H. P. Hood, Inc., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than November 27, 1989.

FOR FURTHER INFORMATION CONTACT: Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0119.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to H. P. Hood, Inc., 500 Rutherford Ave., Boston, MA 02129.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 0.75 percent, and (2) sufficient vitamin A palmitate is added to ensure that a 4-fluid-ounce serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calorie" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog."

The product complies with reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is a 50 percent or more reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 1,056,000 quarts of the test product. The product will be distributed in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

The test product is to be manufactured at H. P. Hood, Inc., 500 Rutherford Ave., Boston, MA 02129.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than November 27, 1989.

Dated: August 23, 1989.

Fred S. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-20300 Filed 8-28-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-89-1943; FR-2467]

Public Housing Child Care Demonstration Program; Fund Availability, Fiscal Year 1989

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Fund Availability: Extension of time to submit applications.

SUMMARY: On July 14, 1989, HUD published a Notice of Fund Availability (NOFA) soliciting applications for funding under the Public Housing Child Care Demonstration Program. Today's notice extends the application deadline to September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Annette Hancock, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5256, Washington, DC 20410. Telephone (202) 755-5585. (This is not a toll-free number). Copies of the NOFA, which contains instructions for submitting applications, are available upon written or telephone request. To ensure a prompt response, it is suggested that requests for the NOFA be made by telephone.

DATES: Applications for funding must be submitted by September 29, 1989.

SUPPLEMENTARY INFORMATION: On July 14, 1989, (54 FR 29840) HUD published a NOFA announcing the availability of $5 million for fiscal year 1989 for the Public Housing Child Care Demonstration Program under amended Section 222 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, approved November 30, 1983). The demonstration is intended to provide grants to non-profit organizations to: (1) Assist in establishing child care facilities so that the parents or guardians of preschool or school-aged children may seek, retain or train for employment; and (2) determine the extent to which the availability of such child care services facilitates the employability of the parents or guardians of children residing in public housing. This notice also implements Section 1002 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988). Section 1002 provides that the child care facilities under this demonstration program may be established not only in lower income housing projects (as provided by Section 117 of the Housing and Community Development Act of 1987), but also in facilities located near such projects.

The notice stated that applications were due by August 28, 1989. Today's notice extends the application deadline to September 29, 1989. This extension will permit eligible applicants adequate time to prepare quality applications in response to the notice.

Authority: Sec. 222 of the Housing and Urban-Rural Recovery Act of 1983, (12 U.S.C. 1701z-6 note); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 24, 1989.

Thomas Sherman,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 89-20317 Filed 8-28-89; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-09-4351-08-SPCA]

Availability of Record of Decision for the San Pedro River Riparian Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management's Safford District, Arizona, announces the availability of the San Pedro River Riparian Management Plan as approved in the Record of Decision (ROD) signed on August 15, 1989. This ROD documents the approval of the plan described in the Final Environmental Impact Statement (EIS) for the San Pedro River Riparian Management Plan of June 1989.

The approved plan provides a framework to guide management decisions during the next 15 years on about 47,000 acres of public land in the upper San Pedro River Valley in Cochise County. These lands are part of the San Pedro Riparian National Conservation Area (NCA). The NCA contains additional lands that are being planned for in the Safford District Resource Management Plan, now in preparation.

The approved plan documents the kinds and levels of use permitted to maintain or improve the riparian ecosystem presently found in the area. The plan prohibits the use of vehicles off designated roads and provides for the development of a limited number of recreational facilities, as well as research and administrative facilities. A portion of the NCA is closed to the discharge of firearms.

ADDRESSES: Copies of the ROD are available from: Area Manager, San Simon Resource Area, Bureau of Land Management, 425 East 4th Street, Safford, Arizona 85546, telephone (602) 428-4040 or the San Pedro Project Office, Bureau of Land Management, Box 9853, RR 1, Huachuca City, Arizona 85616, telephone (602) 457-2265. Public reading copies will be available at these locations.

FOR FURTHER INFORMATION CONTACT: Vernon L. Saline, San Simon Area Manager, 425 East 4th Street, Safford, Arizona 85546, telephone (602) 428-4040.

Dated: August 15, 1989.

D. Dean Bibles,

Arizona State Director.

[FR Doc. 89-20281 Filed 8-28-89; 8:45 am]

BILLING CODE 4310-32-M

[NM-030-09-4320-14]

Las Cruces District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: The meeting will be held at the conference room of the A. B. Cox Visitor Center in the Organ Mountains east of Las Cruces, New Mexico. The purpose of the meeting is to review 8100 projects for FY 89 and FY 90, to review Range Improvement Program procedures, and review a range policy update.

The agenda is:

1. 10:00 a.m.: Opening remarks, approval of minutes.
2. 10:15 a.m.: 8100 Program Update, FY 89 Projects, FY 90 Projects.
3. 11:00 a.m.: Range Improvement Program Procedures.
4. 11:45 a.m.: Lunch.
5. 1:00 p.m.: Public Comment Period.
6. 1:15 p.m.: Range Policy Update.
7. 2:00 p.m.: Adjourn.

DATE: Meeting will be held on Wednesday, September 27, 1989.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, Las Cruces District, Bureau of Land Management, 1800 Marquess Street, Las Cruces, NM 88005 or at (505) 525–8228.

Dated: August 23, 1989

Tim Salt,

Mimbres RA, Area Manager.

[FR Doc. 89–20265 Filed 8–28–89; 8:45 am]

BILLING CODE 4310–FB–M

[NM–060–4351–90; NM NM 0283362]

Order Providing for Opening of Public Land; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 3 of the Recreation and Public Purposes Act of June 14, 1926 (42 U.S.C. 869), as amended by the Acts of June 4, 1954 (68 Stat. 173), and September 21, 1959 (73 Stat. 571), the following described patented land has reverted back to the United States, such reversion being evidenced by deed recorded on June 23, 1989, Eddy County, New Mexico:

New Mexico Principal Meridian, New Mexico

T. 17 S., R. 25 E.,
sec. 3, lots 3, 4, and S½NW¼.
The land described contains 160.54 acres.

Effective 9:00 a.m. on the date of publication of this notice, the above described land shall be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All applications received prior to 9:00 a.m. on the date of publication of this notice, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Inquiries concerning the land should be addressed to State Director, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87504.

Frank Splendoria,

Acting State Director.

[FR Doc. 89–20280 Filed 8–28–89; 8:45 am]

BILLING CODE 4310–FB–M

[ID–943–09–4214–11; I–010796]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that a 145.00 acre withdrawal for the Dixie Ranger Station Administrative Site and Pasture continue for an additional 50 years. The land is being used as an administrative site. This land will remain closed to surface entry and mining, but has been and will remain open to mineral leasing.

EFFECTIVE DATE: Comments shall be received on or before November 27, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1735.

The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order No. 3093 for the Dixie Ranger Station Administrative Site and Pasture be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following-described land.

Boise Meridian

T. 25 N., R. 8 E. (unsurveyed)
sec. 7, NW¼SE¼NE¼, S½SE¼NE¼, E½SE¼, E½E½NE¼SW¼SE¼ and E½SE¼SW¼SE¼;
sec. 8, NW¼NW¼SW¼;
sec. 18, E½NE¼NW¼NE¼, E½W½NE¼NW¼NE¼ and SE¼NW¼NE¼.
The area described contains 145.00 acres in Idaho County.

The withdrawal is essential for protection of substantial capital improvements on the administrative site. The withdrawal closed the land to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: August 21, 1989.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 89–20282 Filed 8–28–89; 8:45 am]

BILLING CODE 4310–GG–M

Minerals Management Service

Development Operations Coordination Document; Corpus Christi Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 9534, Block 15, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Fresh Water City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 16, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the

public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executive of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Dated: August 18, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-20301 Filed 8-28-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 19, 1989. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by September 13, 1989.

Beth L. Savage,

Acting Chief of Registration, National Register.

ALASKA

Ketchikan Gateway Borough-Census Area

Gilmore Building, 326 Front St., Ketchikan, 8901415

ARKANSAS

Drew County

Veasey—DeArmond House, AR 81, 15 mi. N of Monticello, Lacey vicinity, 89001424

Franklin County

Shelton—Rich Farmstead, Rt. 3 W of AR 23 S of Ozark, Web City vicinity, 89001423

Hempstead County

Ward—Jackson House, 122 N. Louisiana, Hope, 89001421

INDIANA

Marion County

General Motors Buick Showroom Building, 1302 N. Meridian St., Indianapolis, 89001410

Monroe County

Bloomington City Hall, 122 S. Walnut St., Bloomington, 89001413

Rush County

Arnold, Dr. John, Farm, W of Glenwood, Rushville vicinity, 89001409

Harcourt, James F., House, Co. Rd. 500 W. at 750 S., Moscow vicinity, 89001412

Manche, Maurice W., Farmstead, Co. Rd. 900 W, Carthage vicinity, 89001411

Vanderburgh County

Lincolnshire Historic District, Roughly bounded by Lincoln, Bennighof, Bellemeade, Lodge, Washington, Harlan, E. Chandler, and College, Evansville, 89001426

Vigo County

Ohio Boulevard—Demming Park Historic District, Roughly Ohio Blvd. from 19th to Keane, Terre Haute, 89001425

KENTUCKY

Montgomery County

Northwest Residential District, Roughly AR 1991, N. Maysville St., W. Main St., Samuels Ave., High St., Antwerp Ave., Holt, Sycamore, and Sterling, Mt. Sterling, 89001422

LOUISIANA

Natchitoches Parish

Oakland Plantation (Boundary Increase), E of Natchez on LA 494, Natchez vicinity, 89001444

MICHIGAN

Midland County

Ball, Howard, House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 1411 W. St. Andrews, Midland, 89001432

Cavanagh, Joseph A., House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 415 W. Main, Midland, 89001434

Conner, Donald L., House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 2705 Manor, Midland, 89001439

Diehl, Oscar C., House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 919 E. Park, Midland, 89001436

Greene, George, House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 115 W. Sugnet, Midland, 89001441

Hanson, Alden, House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 1605 W. St. Andrews, Midland, 89001443

Heath, Sheldon, House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 1505 W. St. Andrews, Midland, 89001438

Lewis, F. W., House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 2913 Manor, Midland, 89001435

MacCallum, Charles, House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 1227 W. Sugnet, Midland, 89001442

Pardee, James T., House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 812 W. Main St., Midland, 89001431

Stein, Earl, House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 209 Revere, Midland, 89001437

Whitman, John S., House (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 2407 Manor, Midland, 89001440

MISSOURI

Randolph County

Burkholder—O'Keefe House, 605 S. Fifth St., Moberly, 89001414

NORTH CAROLINA

Bladen County

Trinity Methodist Church, Old Trinity Methodist Church, Elizabethtown, 89001419

Durham County

Unstead, Adolphus W., House, MC 1607, 0.5 mi. N of NC 1611, Bahama vicinity, 89001418

Rutherford County

Forest City Baptist Church, 301 W. Main St., Forest City, 89001417

UTAH

Sanpete County

Casino Theatre, 78 S. Main St., Gunnison, 89001416

WISCONSIN

Marathon County

Wausau Club, 309 McClellan St., Wausau, 89001420

[FR Doc. 89-20279 Filed 8-28-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[No. MC-C-30146]

The May Department Stores Co. and Volume Shoe Corp.; Petition for Declaratory Order; Transportation Within Single State of Merchandise Imported by Water

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of a petition for declaratory order.

SUMMARY: Upon petition by The May Department Stores Company and its wholly owned subsidiary, Volume Shoe Corporation (May), the Commission has instituted a declaratory order proceeding. May seeks a finding that

inland transportation of merchandise imported from the Far East to California ports aboard regulated ocean carriers is in foreign commerce subject to our jurisdiction. The merchandise is briefly held in California warehouses and then tendered to Commission-regulated carriers for transportation to California destinations.

DATES: Persons interested in participating in this proceeding should so advise the Commission in writing by September 13, 1989. A list of interested parties will then be compiled and served. Petitioners will have 10 days from the service date of that list to serve each party on the list and the Commission with a copy of each of their comments. Other parties will then have 35 days from the service date of the service list to submit their comments to the Commission and to petitioners' representatives. Petitioners will have 50 days from the service date of the service list to reply.

ADDRESSES: Send and original and 10 copies of comments referring to No. MC–C–30146 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of comments to petitioners' representatives: Mark J. Andrews, Mark D. Back, Suite 700, McPerson Building, 901 Fifteenth Street, NW., Washington, DC 20051–2301.

FOR FURTHER INFORMATION CONTACT: Andrew J. Nosacek, (202) 275–1712. Richard Felder, (202) 275–7691. (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275–7428. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: August 22, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Chairman Gradison concurred.

Noreta R. McGee,

Secretary.

[FR Doc. 89–20326 Filed 8–28–89; 8:45 am]

BILLING CODE 7035–01–M

Motor Carrier Applications to Consolidate, Merge, or Acquire Control

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as the finance application or any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Application(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notification of effectiveness of this decision-notice or the application of a non-complying applicant shall stand denied.

Findings

The finding for these applications are set forth at 49 CFR 1182.6.

MC–F–19478, filed July 28, 1989. GREYHOUND LINES, INC. (GLI) (Suite 2400, 901 Main Street, Dallas, TX 75202)—PURCHASE (PORTION)—UNITED LIMO, INC. (United Limo) (10844 McKinley Highway, P.O. Box 287, Osceola, IN 46561). Applicants' representatives: Fritz R. Kahn, William C. Evans, and Mark D. Back, Suite 700, 901 Fifteenth Street, NW, Washington, DC 20005–2301, attorneys for GLI. Robert B. Hebert, Suite 2300, One Indianapolis Square, Indianapolis, IN 46204, attorney for United Limo.

GLI and United Limo, motor common carriers of passengers, seek approval for a route sale in which GLI will acquire United Limo's operating authority in MC–150365 (Sub-No. 6), which authorizes regular-route authority between Milwaukee, WI, and O'Hare International Airport, at or near Chicago, IL. United Limo operates as a motor carrier of passengers in interstate commerce pursuant to MC–150365 and related subnumbers. United Limo holds interstate regular-route passenger authority in the States of IL, IN, MI, and WI, and irregular-route charter and special operations authority between points in the United States. In addition, United Limo holds intrastate authority in IN and MI.

GLI is a wholly owned subsidiary of noncarrier GLI Bus Operations Holding Company which, in turn, is a wholly owned subsidiary of noncarrier GLI Holding Company which, in turn, is controlled through stock ownership by Fred G. Currey, Craig R. Lentzsch, and Anthony P. Lannie, noncarrier individuals, of Dallas, TX. Certain affiliations of GLI with other carriers have been approved in other proceedings and would not be affected by this transaction. Common control of GLI with BusLease Contract Services, Inc. (MC–193190), Texas, New Mexico & Oklahoma Coaches, Inc. (MC–61120), and Vermont Transit Co., Inc. (MC–45626) was approved in MC–F–18260. Acquisition by GLI of the former 50 percent stock interest of Trailways Lines, Inc., in Continental Panhandle Lines, Inc. (MC–8742) was approved in MC–F–18505. Collectively, GLI and its affiliates currently hold and exercise, and will continue to hold and exercise, authority encompassing regular-route interstate and intrastate operations throughout the 48 contiguous States and DC, interstate charter and special operations in DC and every State except HI, and package express operations nationwide.

By decision served August 21, 1989, the Commission has granted applicant's petition for waiver of the otherwise applicable information requirements of Appendices A–6, A–7, B–4, C–2, C–5, and C–6 of the OP–F–44 application form.

Applicants have been granted temporary authority to lease the pertinent operating rights pending final disposition of the finance application.

Decided: August 22, 1989.

By the Commission, the Motor Carrier Board.

Noreta R. McGee,

Secretary.

[FR Doc. 89–20342 Filed 8–28–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Dubois, PA

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 14, 1989, a proposed Consent Decree in *United States* v. *City of Dubois, Pennsylvania,* (W.D. Pa) Civil Action No. 89–182–J was

lodged with the United States District Court for the Western District of Pennsylvania. The Consent Decree concerns violations of sections 309 (b) and (d) and section 402 of the Clean Water Act, 33 U.S.C. 1319 (b) and (d) and 1342. Defendant City of Dubois (the "City") has violated its National Pollutant Discharge Elimination System ("NPDES") permit by consistently exceeding its permit limits for biochemical oxygen demand, total suspended solids, and sporadically violating its effluent limitation for ammonia-nitrogen at its Publicly-Owned Sewage Treatment Plant ("POTW"). Also, the City consistently failed to analyze its wastewater samples correctly. The proposed Consent Decree requires defendant to remedy these violations through upgrade and expansion of the POTW. Further, the Decree requires the City to institute a quality assurance/quality control program to correct its water sampling deficiencies. The City is required to pay a civil penalty of $35,000 for its violations of the Clean Water Act and the Pennsylvania Clean Streams Act: $23,333 to the United States and $11,667 to the Commonwealth of Pennsylvania. The consent decree is backed by stipulated penalties and is consistent with EPA's guidelines and policies.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Dubois, Pennsylvania*, D.J. No. 90-5-1-1-3285.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Western District of Pennsylvania, 633 U.S. Post Office & Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219 and the U.S. Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, Pennsylvania 19107. The Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-20302 Filed 8-28-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; G&F Recycling and Salvage Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *G&F Recycling and Salvage Corp.*, 88 Civ. 2576, has been lodged with the United States District Court for the District of New Jersey on August 10, 1989. The proposed consent decree concerns failures to respond to an information request and a Compliance Order, each issued by the Environmental Protection Agency and relating to partial demolition and removal of asbestos from a building in Lodi, New Jersey. The proposed consent decree requires defendant to pay civil penalties and enjoins defendant from violating the Clean Air Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *G&F Recycling and Salvage Corp.*, D.J. Ref. 90-5-2-1-1231.

The proposed consent decree may be examined at the office of the United States Attorney and the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of Department of Justice.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-20303 Filed 8-28-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: Advances of Transportation and Subsistence Costs

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA), Department of Labor, in the course of recent litigation (*Jean* v. *Department of Labor*, Civ. No. 89-0611-OG (D.D.C.)), has announced its interpretation of 20 CFR 655.102(b)(5)(i), dealing with advances of transportation and subsistence costs in the temporary alien agricultural labor certification program. The interpretation was set forth in a Declaration by the Director, U.S. Employment Service, which is published below for public information.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, Employment and Training Administration, Suite N-4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-535-0165 (this is not a toll-free number.)

Signed at Washington, DC this 23 day of August, 1989.

Roberts T. Jones,

Assistant Secretary of labor.

Declaration of Robert A. Schaerfl

I, Robert A. Schaerfl, declare and state, upon information and belief, as follows:

1. I am the Director of the United States Employment Service, Employment and Training Administration ("USES"), United States Department of Labor ("DOL").

2. Plaintiffs have brought this action challenging the promulgation of a regulation by the U.S. Department of Labor concerning transportation and subsistence costs for farm workers under the temporary agricultural labor certification program. This interim final regulation, codified at 20 CFR 655.102(b)(5)(i), and issued by the DOL on June 1, 1987, 52 FR 20496, was issued pursuant to the temporary foreign agricultural worker program ("H-2A") established by the Immigration Reform and Control Act of 1986 ("IRCA"), 8 U.S.C. 1101(a)(15)(H)(ii)(a) and 1186.

3. The Director of USES, as the delegate of the Secretary of Labor,

pursuant to 20 CFR 655 *et seq.*, has the authority to construe and interpret the H–2A regulatory scheme to ensure that the domestic work force is protected from the admission of temporary alien workers. See, 20 CFR 655.0(c).

4. The plaintiffs have asserted that the regulation was promulgated in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. 701 and 706 and is contrary to the INA and IRCA. While the defendants maintains that the plaintiffs lack standing and that this case is not ripe for review, the defendants recognize that the regulation as currently written can be interpreted to weaken the protections available to domestic workers. Such an interpretation was not our intent.

5. Therefore, in order to resolve this matter without further litigation, the DOL hereby agrees to the following.

a. The current regulation dealing with transportation costs, codified at 20 CFR 655.102(b)(5)(i), states in relevant part:

> The employer shall advance transportation and subsistence costs (or otherwise provide them) to workers when it is the prevailing practice of non-H-2A agricultural employers in the occupation in the area to do so, or when such benefits are extended to H–2A workers.

b. The DOL agrees that the current regulation will be interpreted by the U.S. Department of Labor as if the language in the predecessor regulation, which was codified at 20 CFR 655.202(a) (1986), and which addressed the "indirect" advancement of transportation costs, had not been deleted. In particular, the current regulation shall be construed as if the following language from the earlier regulation was still present:

> For example, if the employer intends to advance transportation costs to foreign workers either directly or indirectly (by having them paid by the foreign government involved), the employer must offer to advance the transportation costs of U.S. workers.

c. The DOL further agrees that they will published an appropriate notice in the **Federal Register** announcing this decision within thirty days of the filing of this declaration in court.

6. Furthermore, DOL is currently considering the promulgation of a new regulation which would deal more extensively with the advance transportation question.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

Dated: July 12, 1989.

Robert A. Schaerfl

Director, United States Employment Service, U.S. Department of Labor Employment and Training Administration.

[FR Doc. 89–20244 Filed 8–28–89; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–89–9–M]

Bunker Hill Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Bunker Hill Mining Company, P.O. Box 29, Kellogg, Idaho 83837 has filed a petition to modify the application of 30 CFR 56.19011 (drum flanges) to its Bunker Hill Mine (I.D. No. 10–00083) located in Shoshone County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that flanges on drums extend radially a minimum of 4 inches or three rope diameters beyond the last wrap, whichever is the lesser.

2. As an alternate method, petitioner proposes to suspend two adjustable threaded ⅝" rods with a ¼"×6"×30" curved plate, that will prevent the cable from jumping off the drum. The clearance between the plate and the drum flanges would be between 1/16" minimum to ½" maximum. The rope diameter is ¾".

3. In support of this request, petitioner states that the Orr Hoist was installed in 1954, and there has never been any incidents or any record of accidents of any type since installation.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 28, 1989. Copies of the petition are available for inspection at that address.

Dated: August 17, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89–20337 Filed 8–28–89; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–89–122–C]

Big Bottom Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Big Bottom Coal Company, Inc., P.O. Box 682, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas adjacent mines; drilling of boreholes) to its Mine No. 1 (I.D. No. 15–12618) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that whenever any working place approaches within 200 feet of any workings of an adjacent mine, a borehole or boreholes must be drilled to a distance of at least 20 feet in advance of the working face of such working place and must be continually maintained to a distance of at least 10 feet in advance of the advancing working face. When there is more than one borehole, they must be drilled sufficiently close to each other to ensure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes must also be drilled not more than 8 feet apart in the rib of such working place to a distance of at least 20 feet and at an angle of 45 degrees.

2. As an alternate method, petitioner proposes to drill deep test holes, with centers every 25 feet, in lieu of 20-foot test drill holes with specific equipment and procedures as outlined in the petition.

3. In support of this request, petitioner states that—

(a) The long hole drill would be permissible and capable of drilling holes in excess of 400 feet;

(b) The test drilling would be performed away from the current working faces;

(c) The development of an 80-foot block would require a minimum of only six major machine moves rather than the 24 which are required by the standard;

(d) The proposed plan greatly reduces the miners' exposure to caught-by and struck-by accidents;

(e) Fewer people would be exposed to any potential hazards which might result if an adjacent mine works were penetrated; and

(f) The drill operators would be trained in machine set-up and use of the drill's thrust controls for guiding the drill steel, which would help to ensure that straight drill holes are maintained.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 28, 1989. Copies of the petition are available for inspection at that address.

Dated: August 17, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-20338 Filed 8-28-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-116-C]

Webster County Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Webster County Coal Corporation, P.O. Box 128, Clay, Kentucky 42404 has filed a petition to modify the appliction of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installational; minimum requirements) to its Dotiki Mine (I.D. No. 15-02132) located in Webster County, Kentucky. The petition is filed under section101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. On April 20, 1989, petitioner was granted a modification of 30 CFR 75.1103-4(a) to install one sensor at every belt drive and belt conveyor tailpiece combination where a belt drive discharges onto a belt conveyor tailpiece, to install an early warning fire detection system, and to monitor the air with a carbon monoxide detection system (docket number M-88-68-C).

2. This petition concerns paragraphs 1(b), 1(C) and 3 of the Decision and Order (DO).

3. Paragraph 1(b) of the DO which states that the carbon monoxide monitoring devices shall be located so that the air is monitored at each belt drive and tailpiece and at intervals not to exceed 2,000 feet along each conveyor belt entry, except as provided in paragraph 1(c) or unless the District Manager requires additional carbon monoxide monitors to be installed as part of said plan to ensure the safety of the miners. When the air is coursed into adjacent return entry before crossing the belt tailpiece, the monitoring device shall be installed at the first crosscut outby the tailpiece on the same split of air.

Petitioner requests that outby the tailpiece be changed to outby the temporary stopping (across the belt).

4. Paragraph 1(c) of the DO lists several locations where only one low-level carbon monoxide sensor shall be required, and that it be installed not more than 100 feet inby the drive, belt take-up, and tailpiece on the same split of air.

Petitioner requests that inby the drive, belt take-up, and tailpiece on the same split of air be changed to inby (if the airflow is inby) or outby (if the airflow is outby), the drive, belt take-up and tailpiece on the same split of air.

5. Paragraph 3 of the DO states that the low-level carbon monoxide monitoring devices shall be capable of providing both visual and audible alarm signals.

Petitioner requests that at 10 ppm above the established ambient level, all persons shall be withdrawn to a safe area outby the working places be changed to the Approved Firefighting Plan shall be implemented and appropriate action shall be taken to determine the cause of the actuation.

6. Petitioner states that the proposed amendment to the Decision and Order granting the petition modifying the application of 30 CFR 75.1103-4(a) will improve the paragraphs addressed, and will provide no less than the same measure of protection for the miners.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 28, 1989. Copies of the petition are available for inspection at that address.

Dated: Auguste 18, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-20339 Filed 8-28-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-120-C]

Christian Energies Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Christian Energies Company, Inc., Route 1, Box 16, Williamsburg, Kentucky has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 3 (I.D. No. 15-16660) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. No methane has been detected in the mine.

3. The three-wheel tractors are permissible DC-powered machines, without hydraulics. Approximately 30-40% of the coal is hand loaded into a drag-type bucket. Approximately 20% of the time that the tractor is in use, it is used as a mantrip and supply vehicle.

4. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not

resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 28, 1989. Copies of the petition are available for inspection at that address.

Dated: August 17, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

FR Doc. 89-20340 Filed 8-28-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-121-C]

Rebecca Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Rebecca Coal Company, HC 83 Box 668, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15-16611) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. No methane has been detected in the mine.

3. The three-wheel tractors are permissible DC-powered machines, without hydraulics. Approximately 30-40% of the coal is hand loaded into a drag-type bucket. Approximately 20% of the time that the tractor is in use, it is used as a mantrip and supply vehicle.

4. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia, 22203. All comments must be postmarked or received in that office on or before September 28, 1989. Copies of the petition are available for inspection at that address.

Dated: August 17, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-20341 Filed 8-29-89; 8:45 am]

BILLING CODE 4510-43-M

LOWER MISSISSIPPI DELTA DEVELOPMENT COMMISSION

Announcement of Arkansas Public Hearing and Colleges and Universities Conference

Background

The Lower Mississippi Delta Development Commission was created by Public Law 100-460, signed on October 1, 1988. The purpose of the Commission is to identify and study the economic development, infrastructure, employment, transportation, resource development, education, health care, housing, and recreation needs of the Lower Mississippi Delta region by seeking and encouraging the participation of interested citizens, public officials, groups, agencies, and others in developing a 10-year plan that makes recommendations and establishes priorities to alleviate the needs identified. The Commission will make its report to Congress, the President, and the Governors of Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee no later than May 14, 1990.

This notice announces the Arkansas public hearing and the Commission's Colleges and Universities Conference.

Public Hearing

Time: 7:15 p.m. to 11:30 p.m. September 5, 1989

Place: Phillips County Community College, Campus Drive, Helena, Arkansas, 72042

Status: Public oral and written testimony encouraged

Contact: Ann Sartwell, Telephone (901) 753-1400

Colleges and Universities Conference

Time: 4:00 p.m. to 7:00 p.m., September 7, 1989 8:15 a.m. to 4:00 p.m., September 8, 1989

Place: Fogelman Center, Memphis State University, Memphis, Tennessee 38152

Status: Registration Fee

Contact: Stan Hyland, Telephone (901) 753-1400

Wilbur F. Hawkins,

Executive Director.

[FR Doc. 89-20262 Filed 8-28-89; 8:45 am]

BILLING CODE 6820-SN-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences, Subcommittee on Theory, Experimental, and Laboratory Astronomy; Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences Subcommittee on Theory, Experimental, and Laboratory Astronomy.

Date and time: September 18 and 19, 1989 9 a.m.–5 p.m.

Place: National Science Foundation Room 1243.

Type of Meeting: September 18 and 19, 1989—Open.

Contact person: Dr. G. Siegfried Kutter, Program Director, Stars and Stellar Evolution, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 (202/357–7622).

Minutes: May be obtained from the contact person at the above address.

Purpose of committee: To provide advice and recommendations concerning research programs, proposals, and projects in NSF–funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.

Agenda: September 18 and 19.

Discussion of the scientific areas that show the greatest promise with regard to new breakthroughs in discovery and understanding of theory, experimental, and laboratory techniques in astronomy.

Discussion of activities and initiatives needed to address the scientific issues identified above.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–20272 Filed 8–28–89; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Astronomical Sciences; Subcommittee on Education and Human Resources; Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences, Subcommittee on Education and Human Resources.

Date and Time: September 18, 19, and 20, 1989, 9:00 am–5:00 pm.

Place: International Room, Radisson-Seattle Hotel, 17001 Pacific Highway, Seattle, WA 98188.

Type of Meeting: September 18, 19, and 20, 1989, Open.

Contact Person: Dr. James P. Wright, Program Director, Cross-Directorate Programs, Division of Astronomical Sciences, Room 618, National Science Foundation, Washington, DC 20550 (202/357–7539).

Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: The Subcommittee will review manpower issues in astronomy and will also concern itself with addressing issues and programs that deal with efforts in bringing minorities, women, and the handicapped into scientific and engineering careers.

Agenda: September 18, 19, and 20.

Review and advise on the strategic issues and programs involving demand and supply of scientists, engineers, and technicians for ground-based atronomy research; involving education and training in the astronomical sciences, particularly at the undergraduate level; and to consider how to increase the participation of minorities, women, and the handicapped.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–20273 Filed 8–28–89; 8:45 am]

BILLING CODE 7555–01–M

Division of Earth Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Earth Sciences Proposal Review Panel.

Date: September 18–22, 1989.

Time: 8:00 a.m. to 6: p.m. each day.

Place: The National Science Foundation, Room 543, 1800 G. Street, NW, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Alan Gaines, Section Head, Division of Earth Sciences, Room 602, National Science Foundation, Washington, DC 20550; Telephone: (202) 357–9591.

Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in Earth Sciences.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–20274 Filed 8–28–89; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341; FERMI–2]

Detroit Edison Co. and Wolverine Power Supply Cooperative, Inc.; Environmental Assessment and Finding of No Signficant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for the operation of Fermi-2 located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications (TS) for the Reactor Protection System (RPS) to reflect design changes for the Reactor Protection System (RPS) scheduled to be completed during the upcoming refueling outage scheduled for September 1989. The design change will eliminate the Backup Manual Scram function and add further redundancy to the RPS capability to manually initiate a scram.

The proposed action is in accordance with the licensees' application for amendment dated May 10, 1989.

The Need for the Proposed Action

The proposed changes to the TS are required in order for the TS to include appropriate requirements for the as-modified RPS design.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The proposed revision would reflect design changes which are being made to eliminate the Backup Manual Scram (BUMS) feature. The BUMS feature when actuated causes a concurrent isolation for the Main Steam Isolation Valves (MSIV). This is undersirable since the MSIV isolation

results in the loss of the main condenser as a heat sink. In place of the Bums feature, DEC is providing an additional channel in each RPS trip logic for the Manual Scram and Reactor Mode Switch features. These additional channels provide an alternative method to meet the regulatory and design requirements for manual scram redundancy. Therefore, the proposed changes do not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no signficant radiological impact and could result in the reduction of the radiological impacts.

With regard to potential nonradiological impacts, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiologial environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Because the Commission has concluded that there is no signifiant environmental impact associated with the proposed amendment, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendment. This would prevent the design modifications from being completed and would accordingly not alleviate the problems of the current BUMS design.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Fermi-2," dated August 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a signficant effect on the quality of the human environment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 11, 1989 (54 FR 29117). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action, see the application for amendment dated April 3, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 23rd of August 1989.

For the Nuclear Regulatory Commission.

John O. Thoma,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–20312 Filed 8–28–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341; FERMI–2]

Detroit Edison Co. and Wolverine Power Supply Cooperative, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for the operation of Fermi-2 located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications (TS) relating to the Source Range Monitors (SRM) to permit core off-loading during the first refueling outage. The proposed amendment also increases the minimum signal-to-noise ratio required for a reduced SRM minimum count rate requirement and eliminates a related TS provision which is no longer needed.

The proposed action is in accordance with the licensees' application for amendment dated April 3, 1989.

The Need for the Proposed Action

The proposed changes to the TS are required in order to allow complete core off-loading and ensure adequate signal-to-noise ratio exists when the SRM minimum count rate requirement is reduced.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The proposed revision would permit complete core off-loading by eliminating the SRM minimum count rate requirements during the off-load process once the remaining fuel is configured such that SRM monitoring is no longer needed for safety. The SRM minimum count rate requirement may be reduced to 0.7 counts per second (cps) from 3.0 cps as long as a sufficient signal-to-noise ratio is present. The current requirement is a signal-to-noise ratio of 2; the proposal increases this required ratio to 20 to ensure that the assumptions regarding SRM measurement uncertainty remain satisfied at the reduced SRM levels. Therefore, the proposed changes do not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological impact and could result in the reduction of the radiological impacts.

With regard to potential nonradiological impacts, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Because the Commission has concluded that there is no significant environmental impact associated with the proposed amendment, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendment. This would prevent core offloading and not provide appropriate TS provisions for reducing

the SRM minimum count rate requirements.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Fermi-2," dated August 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environment impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 1, 1989 (54 FR 31749). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action, see the application for amendment dated May 10, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 23rd of August 1989.

For the Nuclear Regulatory Commission.

John O. Thoma,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–20313 Filed 8–28–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–361 and 50–362]

Southern California Edison Co., et al., San Onofre Nuclear Generating Station, Units 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses No. NPF–10 and No. NPF–15 issued to Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees) for operation of San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the following Technical Specifications (TS) to increase the interval for the 18-month surveillance tests to at least once per refueling interval, which is defined as 24 months, in support of the nominal 24-month fuel cycle:

a. TS 3.4.7.6, "Snubbers."

b. TS 3/4.10, "Special Test Exceptions." (Unit 2 only)

The Need for the Proposed Action

The proposed amendments are required to prevent unnecessary plant shutdowns to perform a surveillance test which cannot be performed during plant operation.

Environmental Impacts of the Proposed Action

For each of the proposed amendments, the licensees provided analyses to demonstrate the reliability of the systems. The staff reviewed the licensees' analyses and agrees that reliability of the systems would not be significantly degraded by extension of the surveillance intervals. Therefore, the staff has approved the proposed 24-month surveillance interval for these proposed changes.

As a result, the proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendments do not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendments do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notices of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action were published in the **Federal Register** on February 27, 1989 (54 FR 8250) and April 24, 1989 (54 FR 16438–D). No request for hearing or petition for leave to intervene was filed following these notices.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Units 2 and 3, dated April 1981 and its Errata dated June 1981.

Agencies and Persons Consulted

The NRC staff has reviewed the licensees' request that supports the proposed amendments. The NRC staff did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the applications for amendments dated May 19, 1988 and March 10, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 22nd day of August, 1989.

For the Nuclear Regulatory Commission.

Harry Rood,

Acting Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–20315 Filed 8–28–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50-445 and 50-446]

Texas Utilities Electrical Co., et al [1]; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of Amendment No. 11 to Construction Permit No. CPPR-126 and Amendment No. 10 to Construction Permit No. CPPR-127 which would authorize the transfer of a 2⅛% ownership interest in the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, from Tex-La to TU Electric. The proposed amendments would delete Tex-La as an owner on the construction permits and increase TU Electric's aggregate ownership to 100%.[2]

Environmental Assessment

Identification of Proposed Action: The proposed action would reflect a transfer of ownership interest in CPSES, Units 1 and 2, from Tex-La to TU Electric. This transfer will in no way affect the design or construction of CPSES nor will it affect the responsibility for operation and control of the facility.

The deletion of Tex-La from the Comanche Peak construction permits and reallocation of Tex-La's 2⅛% ownership interest to TU Electric are in accordance with the agreement between Tex-La and TU Electric dated March 23, 1989, as described in TU Electric's request dated May 4, 1989.

The Need for the Proposed Action: The license conditions attached to the CPSES construction permit required TU Electric to offer ownership access to entities in a specified area of the state of Texas. As a result of the conditions, several smaller power systems purchased shares in the plant, including Tex-La. For a number of reasons, Tex-La now wishes to sell its 2⅛% interest in the CPSES back to TU Electric. On March 23, 1989, TU Electric and Tex-La entered into a settlement agreement that provides for the purchase by TU Electric of Tex-La's ownership interest in the CPSES and also terminates all pending litigation between the two parties in various District Court proceeding in Texas originating from Tex-La's participation in the CPSES.

The requests for amendments were submitted pursuant to 10 CFR 50.30 and 10 CFR 50.90 to properly reflect the change of ownership from Tex-La to TU Electric.

Environmental Impacts of Proposed Action: The proposed action is administrative in nature and involves only the transfer of an ownership interest from one entity to another entity which is already an owner and an applicant. This transfer will in no way affect the design or construction of CPSES, nor will it affect the responsibility for operation and control of the facility. The proposed action will not affect the principal architectural and engineering criteria and environmental protection commitments set forth in the construction permit application, as amended, nor will it change the impact associated with the construction or operation of the CPSES. It will not result in the reallocation of ownership interest from one owner to another. Therefore, the Commission has concluded that there is no environmental impact associated with the proposed action.

Alternative to the Proposed Action: The Commission has concluded that there are no measurable environmental impacts associated with the proposed action. The principal alternative would be for the Commission to deny the requested amendments. This would not reduce the environmental impacts of plant construction or operation.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to the proposed Comanche Peak Steam Electric Station Units 1 and 2, dated June 1974 or the Final Environmental Statement related to the operation of Comanche Peak Steam Electric Station, Units 1 and 2 (NUREG-0775), dated September 1981.

Agencies and Persons Consulted: The NRC staff reviewed the applicant's request and applicable documents referenced therein that support the proposed amendments. The NRC did not consult other agencies or persons in preparing this assessment.

Finding of No Significant Impact

The staff has reviewed the proposed action relative to the requirements set forth in 10 CFR Part 51. Based upon the foregoing environmental assessment, the Commission concludes that there are no significant environmental impacts associated with the proposed action and that issuance of the proposed amendments will not have a significant effect on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, an environment impact statement need not be prepared for this action.

For further details with respect to this action, see the applicant's request for amendments dated May 4, 1989. This document is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room at the Somervell County Public Library on the Square, P.O. Box 1417, Glen Rose, Texas 76043. The staff's evaluation of the request will be published in a safety evalution associated with the amendments to the construction permits for Comanche Peak Steam Electric Station, Units 1 and 2, and will be available for inspection at the locations listed above.

Dated at Rockville, Maryland this 23rd day of August, 1989.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director Comanche Peak Project Division, Office of Nuclear Reactor Regulation.

[FR Doc. 89-20311 Filed 8-28-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 999-90003 General License EA 89-060]

Grand Haven Board of Light and Power; Order Imposing Civil Monetary Penalty

I

Grand Haven Board of Light and Power (licensee), Grand Haven, MI 49417, is authorized to possess and use density/thickness gauges containing byproduct material pursuant to the general license provisions of 10 CFR 31.5. Pursuant to this authority the licensee possessed six byproduct material (cesium-137 sealed sources) gauging devices at its J. B. Sims Generating Station.

II

A special inspection of the licensee's activities was conducted on February 22, 1989 in response to allegations received by the NRC Region III office concerning the inadequate storage of gauges containing byproduct material at the J. B. Sims Station. The inspection disclosed that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter

[1] The current owners of the Comanche Peak Steam Electric Station are: Texas Utilities Electric Company (TU Electric), Tex-La Electric Cooperative of Texas, Inc. (Tex-La), and Texas Municipal Power Agency (TMPA). Transfer of ownership from TMPA to TU Electric was previously authorized by Amendment Nos. 9 and 8 to Construction Permits CPPR-126 and CPPR-127, respectively, for Comanche Peak, Units 1 and 2, on August 25, 1988 to take place in 10 installments as set forth in the agreement attached to the application for amendment dated March 4, 1988. At the completion thereof, TMPA will no longer retain any ownership interest.

[2] The aggregate ownership amount takes into consideration the presently incomplete transfer of 6.2% ownership interest from the TMPA to TU Electric.

dated May 3, 1989. The Notice states the nature of the violations, the provisions of the NRC requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated May 25, 1989. In its response the licensee admitted the violations and asked that the civil penalty be reduced.

III

After consideration of the licensee's response and the statements of fact and argument for reconsideration contained therein, the Deputy Executive Director for Nuclear Material Safety, Safeguards, and Operations Support has determined, as set forth in the Appendix to this Order, that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing, and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered* That:

The licensee pay a civil penalty in the amount of Five Hundred Dollars ($500) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy of the hearing request shall also be sent to the Assistant General Counsel for Hearings and Enforcement, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of such violation, this Order should be sustained.

Dated at Rockville, Maryland, this 21st day of August 1989.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluations and Conclusions

On May 3, 1989, a Notice of Violations and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Grand Haven Board of Light and Power responded to the Notice on May 25, 1989. In its response, the licensee admitted the violations as set forth in the Notice, but requested reconsideration of the civil penalty based on statements concerning their corrective actions. The NRC's evaluation and conclusion regarding the licensee's request for reconsideration of the civil penalty are addressed below.

Summary of Licensee's Response

The licensee admitted the violations in the Notice. The licensee restated the corrective actions previously described in the NRC Inspection Report forwarded to them on March 16, 1989, and updated the implementation status of those corrective actions. The licensee also described in its May 25, 1989, letter some management controls its implemented to ensure long term correction of the violations. The licensee requested reconsideration of the civil penalty based on statements concerning initiation of corrective actions, followup of job responsibilities, and implementation of a preventative maintenance program to prevent recurrence of problems.

NRC Evaluation of Licensee's Response

In determining the amount of civil penalty for the identified violations, the NRC evaluated the six factors for escalation and mitigation outlined in 10 CFR, Part 2, Appendix C (1989) (Enforcement Policy). Our conclusion that the base civil penalty of Five Hundred Dollars ($500) should not be adjusted, was based on these six factors. The licensee focused its request for mitigation of the proposed civil penalty on the factor dealing with "Corrective Action to Prevent Recurrence." That factor recognizes that corrective actions are always required to meet regulatory requirements. In situations where the licensee acts promptly in taking very extensive corrective actions, including actions to prevent recurrence, the civil penalty may be mitigated 50 percent. In this case, while we recognize the final corrective actions appear adequate to prevent recurrence, the initial relocation of the gauges to a secure storage location was at the request (telephonic) of the NRC and the implementation of long term management controls to prevent recurrence occurred after discussion of the need for that type of control during the enforcement conference. Therefore, mitigation of the civil penalty, based on both the immediate and long term corrective actions taken, was not considered warranted.

NRC Conclusion

An adequate basis for mitigation of the civil penalty was not provided by the licensee based on its corrective actions. Consequently, the proposed civil penalty in the amount of $500 should be imposed.

[FR Doc. 89-20310 Filed 8-28-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-133]

Pacific Gas and Electric Co., Humboldt Bay Power Plant Unit No. 3; Exemption

I

Pacific Gas and Electric Company (the licensee) is the holder of Facility License No. DPR-7, which authorizes possession but not operation of Humboldt Bay Power Plant, Unit No. 3 (Humboldt Bay Unit 3). The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The facility consists of a permanently shut down boiling water reactor and stored spent fuel located at the licensee's site in Humboldt County, California.

II

Section 50.54(w) of the Commission's regulations requires that each commercial power reactor licensee shall, by June 29, 1982, take reasonable steps to obtain on-site property damage insurance available at reasonable costs and on reasonable terms from private sources or to demonstrate to the satisfaction of the Commission that it possesses an equivalent amount of protection covering the facility, provided, among other things, that "this insurance must have a minimum coverage limit for the reactor station site of either $1.06 billion or whatever amount of insurance is generally available from private sources, whichever is less."

On May 28, 1982, the licensee filed a previous Request for Exemption from 10 CFR 50.54(w) to reduce the required minimum amount of primary property damage insurance to $100,000,000. In support of this request, the licensee indicated that Humbolt Bay Unit 3 had been shut down since July 1976 and was in cold shutdown condition. The licensee indicated that studies conducted by it and the NRC staff concluded that the unit presented no danger to the health and safety of the public. Further, the licensee was then

maintaining all-risk property damage insurance for Humboldt Bay Unit 3 in the amount of approximately $100,000,000. The licensee submitted that any additional insurance beyond that currently carried should not be required. In addition, the licensee stated that the annual premium for additional insurance would be an unnecessary burden on its ratepayers. That exemption request was granted on November 3, 1982 (54 FR 3168).

In its June 9, 1989 request the licensee asks for a further reduction in the required minimum property damage insurance from $100,000,000 to $63,160,000. Pursuant to 10 CFR 50.12(a) the Commission may grant exemptions from the requirements of the regulations which are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

III

Humboldt Bay Unit 3 has been shut down since July 2, 1976. In 1983, the licensee decided to decommission Humboldt Bay Unit 3 and subsequently submitted a proposed Decommissioning Plan, proposed Technical Specifications (TS) and an Environmental Report. The licensee proposed (1) to amend License No. DPR–7 to possess-but-not-operate status; (2) to delete certain license conditions related to seismic modifications required before the NRC would authorize a return to power operation; (3) to revise the TS to reflect the possess-but-not-operate status; (4) to decommission Humboldt Bay Unit 3 in accordance with the plan included with the submittal; and (5) to extend License No. DPR–7 for 15 additional years, to November 9, 2015, to be consistent with the Decommissioning Plan.

On July 16, 1985 License No. DPR–7 was amended to possess-but-not-operate status. Only July 19, 1988 License No. DPR–7 was amended to approve the Decommissioning Plan and the balance of items 1 through 5 above.

The licensee notes that all fuel has now been removed from the reactor (394 assemblies), all fuel is now stored in the on-site spent fuel pool, along with 54 incore fission chambers, and the unit is now functioning as a spent fuel storage facility. Plant operations are not limited to surveillance and monitoring activities, and continued treatment and purification of spent fuel pool water and water entering the plant as ground water in-leakage. The licensee also notes that the staff's previous evaluation of the spent fuel pool conducted that the probability of any credible means of achieving nuclear criticality was negligibly small.

The licensee explains that the requested insurance minimum of $63,160,000 is the combined book value of the nuclear unit (Humboldt Bay Unit 3, $10,294,000) and the two on-site fossil fuel units ($52,966,000). The licensee indicates that the difference in cost between insuring for $100,000,000 and the proposed $63,160,000 is about $94,000 per year, and that the additional cost is against the public interest as it is a needless expense.

The NRC staff agrees with the licensee that Humboldt Bay Unit 3 is functioning as a spent fuel storage facility, that the risk of criticality is negligibly small, and that the proposed minimum amount of property damage insurance is adequate. A previous Commission-sponsored review and analysis of the costs of clean-up and decontamination at reference non-reactor facilities following postulated accidents comparable to those for which Humboldt Bay Unit 3 is conceivably vulnerable (e.g., fire, explosion) concluded that recovery costs would be substantially less than the proposed insurance minimum (see NUREG/CR–3293). For example, costs of recovery from credible accidents at a mixed oxide plant and a uranium fuel fabrication plant are estimated to be no more than $4.6 million and $2.2 million, respectively, in 1981 dollars. Potential accident recovery costs at these facilities would be higher than at Humboldt Bay Unit 3. This is because the radioactive material is more dispersive and can lead to more widespread contamination than the aged spent fuel elements maintained under water in the spent fuel pool at Humboldt Bay Unit 3. The staff therefore concludes that the underlying purpose of 10 CFR 50.54(w) will still be achieved with a minimum property damage insurance amount of $63,160,000.

Based on the foregoing, and in accordance with 10 CFR 50.12(a) the staff concludes that the exemption from the requirements of 10 CFR 50.54(w) as discussed above, is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Furthermore, full compliance with 10 CFR 50.54(w) is not necessary to achieve the underlying purpose of the rule. Thus, special circumstances exist as described in § 50.12(a)(2)(ii), which the Commission has determined are sufficient to warrant the exemption.

Accordingly, the Commission hereby grants Pacific Gas and Electric Company the following exemption:

The licensee is exempt, until further Order of the Commission, from the requirement to carry primary property damage insurance coverage for Humboldt Bay Unit No. 3 in the full amount called for by 10 CFR 50.54(w)(1), provided that the licensee maintains such primary property damage insurance in an amount not less than $63,160,000.

IV

Pursuant to 10 CFR 51.32, the Commission previously determined that the granting of this Exemption would have no significant impact on the environment (54 FR 34266).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 22nd day of August 1989.

For the Nuclear Regulatory Commission.

John T. Greeves,

Deputy Director, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89–20314 Filed 8–28–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Availability; Procurement Regulatory Activity Report

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Notice of availability of the Procurement Regulatory Activity Report.

SUMMARY: Subsections 25 (g) (1) and (2) of the Office of Federal Procurement Policy (OFPP) Act, as amended by Public Law 100–679, requires the Administrator for Federal Procurement Policy to publish a report within 6 months after the date of enactment and every 6 months thereafter relating to the development of procurement regulations to be issued.

Accordingly, the OFPP has prepared the first Procurement Regulatory Activity Report. This report is designed to satisfy all aspects of subsections 25(g) (1) and (2) of the OFPP Act which includes information on: The status of each regulation; a description of those regulations required by statute; a description of the methods by which public comment was sought; regulations, policies, procedures, and forms under review by the OFPP; whether the regulations have paperwork requirements; the progress made in promulgating and implementing the Federal Acquisition Regulation; and

such other matters as the Administrator determines would be useful.

ADDRESSES: Those persons interested in obtaining a copy of the Procurement Regulatory Activity Report, which is currently being printed, should contact the Executive Office of the President Publications Service, Room 2200, 725 17th Street, NW, Washington, DC, 20503, or phone (202) 395–7332.

Dated: August 23, 1989

David F. Baker,

Acting Deputy Administrator and Acting Administrator.

[FR Doc. 89–20261 Filed 8–28–89; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632–0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on July 31, 1989 (54 FR 31598). Individual authorities established or revoked under Schedule A, B, or C between July 1, 1989, and July 31, 1989, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A's for the month of July.

Schedule B

Department of the Navy

All civilian professor positions at the Marine Corps Command and Staff College. Effective July 27, 1989.

Schedule C

Department of the Air Force

One Secretary to the Vice President for National Security Affairs. Effective July 17, 1989.

One Staff Assistant to the Secretary of the Air Force. Effective July 28, 1989.

U.S. Department of Agriculture

One Confidential Assistant to the Administrator, Animal and Plant Health Inspection Services. Effective July 3, 1989.

One Confidential Assistant to the Administrator, Farmers Home Administration. Effective July 3, 1989.

One Confidential Assistant to the Chief, Soil Conservation Service. Effective July 3, 1989.

One Special Assistant to the General Counsel. Effective July 11, 1989.

One Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective July 18, 1989.

One Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective July 18, 1989.

One Private Secretary to the Assistant Secretary for Congressional Affairs. Effective July 18, 1989.

One Special Assistant to the Chief of Staff. Effective July 25, 1989.

One Confidential Assistant to the Administrator, Bureau of Farmers Home Administration. Effective July 28, 1989.

Department of Commerce

One Confidential Assistant to the Director, Office of Public Affairs. Effective July 3, 1989.

One Special Assistant to the General Counsel, National Oceanic and Atmospheric Administration. Effective July 11, 1989.

One Confidential Assistant to the Chief Economist. Effective July 24, 1989.

One Confidential Assistant to the Deputy Secretary for Basic Industries. Effective July 24, 1989.

One Confidential Assistant to the Deputy Assistant Secretary for U.S. and Foreign Commercial Service. Effective July 26, 1989.

One Confidential Assistant to the Assistant Secretary for Import Administration. Effective July 26, 1989.

One Special Counsel to the General Counsel. Effective July 27, 1989.

One Confidential Assistant to the Under Secretary for International Trade. Effective July 27, 1989.

Department of Energy

One Staff Assistant to the Principal Deputy Assistant Secretary for Conservation and Renewable Energy. Effective July 5, 1989.

One Staff Assistant to the Chief of Staff to the Secretary. Effective July 11, 1989.

One Staff Assistant to the Assistant Secretary, Management and Administration. Effective July 11, 1989.

One Staff Assistant to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental, and Public Affairs. Effective July 13, 1989.

Two Staff Assistants to the Assistant Secretary for Nuclear Energy. Effective July 19, 1989.

One Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies. Effective July 24, 1989.

One Staff Assistant to the Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies. Effective July 25, 1989.

One Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies. Effective July 25, 1989.

Two Staff Assistants to the Deputy Under Secretary, Office of Policy, Planning and Analysis. Effective July 27, 1989.

One Staff Assistant to the Staff Assistant to the Secretary. Effective July 27, 1989.

One Staff Assistant to the Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies. Effective July 27, 1989.

One Staff Assistant to the Administrator, Economic Regulatory Administration. Effective July 27, 1989.

One Staff Assistant to the Executive Assistant to the Secretary. Effective July 28, 1989.

Two Staff Assistants to the Director, Office of Civilian Radioactive Waste Management. Effective July 28, 1989.

Department of Defense

One Confidential Assistant to the Assistant Secretary. Effective July 25, 1989.

Department of Education

One Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective July 6, 1989.

One Confidential Assistant to the Deputy Assistant Secretary for Legislation. Effective July 6, 1989.

One Confidential Assistant to the Assistant Secretary for Postsecondary Education. Effective July 6, 1989.

One Special Assistant to the Assistant Secretary for Vocational and Adult Education. Effective July 6, 1989.

One Confidential Assistant to the Assistant to the Secretary. Effective July 11, 1989.

One Confidential Assistant to the Assistant Secretary for Educational Research and Improvement. Effective July 17, 1989.

One Staff Assistant to the Assistant Secretary for Educational Research and Improvement. Effective July 17, 1989.

One Special Assistant to the Assistant Secretary for Special Education and Rehabilitation Services. Effective July 25, 1989.

One Confidential Assistant to the Director, Public Affairs Service. Effective July 27, 1989.

One Special Assistant to the Deputy Under Secretary for Planning, Budget and Evaluation. Effective July 27, 1989.

Environmental Protection Agency

One Staff Assistant to the Administrator. Effective July 13, 1989.

One Special Assistant to the Administrator. Effective July 18, 1989.

One Staff Assistant to the Administrator. Effective July 29, 1989.

Federal Home Loan Bank Board

One Staff Assistant to the Executive Director of Public Affairs. Effective July 5, 1989.

General Services Administration

One Confidential Assistant to the Deputy Administrator. Effective July 3, 1989.

One Deputy Chief of Staff to the Chief of Staff. Effective July 3, 1989.

One Confidential Assistant to the Administrator. Effective July 11, 1989.

Department of Health and Human Services

One Special Assistant for Public Affairs to the Associated Commissioner for Public Affairs. Effective June 19, 1989. Note: this position should have appeared in the listing dated Monday, July 31, 1989; 54 FR 31598.

One Director, Office of Policy, Planning, and Legislation. Effective July 6, 1989.

One Special Assistant to the Deputy Assistant Secretary for Legislation (Health). Effective July 11, 1989.

One Special Assistant for Liaison to the Associate Commissioner for Legislative Affairs. Effective July 11, 1989.

One Confidential Assistant to the Associate Commissioner for Public Affairs. Effective July 13, 1989.

One Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation. Effective July 13, 1989.

One Staff Assistant to the Secretary. Effective July 13, 1989.

One Associate Administrator, Office of Communications, Family Support Division. Effective July 19, 1989.

One Special Initiatives Coordinator to the Secretary. Effective July 19, 1989.

One Special Assistant to the Associate Commissioner. Effective July 21, 1989.

One Private Sector Initiatives Coordinator to the Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion). Effective July 24, 1989.

One Executive Assistant to the Assistant Secretary for Health. Effective July 25, 1989.

One Special Assistant to the Director, Office of Community Services. Effective July 26, 1989.

One Deputy Director to the Director, Office of Community Services. Effective July 26, 1989.

One Special Assistant to the Secretary, Health and Human Services. Effective July 27, 1989.

One Director, Office of Public Affairs, to the Assistant Secretary for Human Development Services. Effective July 27, 1989.

One Special Assistant to the Assistant Secretary for Health. Effective July 27, 1989.

Department of Housing and Urban Development

One Confidential Assistant to the General Counsel. Effective June 26, 1989. Note: this position should have appeared in the listing dated Monday, July 31, 1989; 54 FR 31598.

One Special Assistant to the Assistant Secretary for Housing. Effective July 5, 1989.

One Special Assistant (Advance) to the Assistant Secretary for Public Affairs. Effective July 5, 1989.

One Associate Deputy General Counsel to the General Counsel. Effective July 6, 1989.

One Executive Assistant to the Assistant Secretary for Public and Indian Housing. Effective July 6, 1989.

One Special Assistant to the Under Secretary. Effective July 6, 1989.

One Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations. Effective July 6, 1989.

One Special Assistant to the Regional Administrator-Regional Housing Commissioner. Effective July 6, 1989.

One Executive Assistant to the Assistant Secretary for Legislation and Congressional Relations. Effective July 11, 1989.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective July 11, 1989.

One Staff Assistant to the Deputy Assistant Secretary for Program Policy Development and Evaluation. Effective July 13, 1989.

One Special Assistant to the Deputy Assistant for Single Family Housing. Effective July 18, 1989.

One Special Assistant to the Deputy Assistant Secretary for Public Affairs. Effective July 18, 1989.

One Special Assistant to the Assistant Secretary for Housing. Effective July 25, 1989.

One Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective July 28, 1989.

One Special Assistant to the Assistant Secretary for Community Planning and Development. Effective July 27, 1989.

One Special Assistant to the Secretary. Effective July 28, 1989.

One Special Assistant to the Regional Administrator-Regional Housing Commissioner (Region II, New York). Effective July 28, 1989.

Department of the Interior

One Staff Assistant for Intergovernmental Affairs to the Assistant to the Secretary and Director, External Affairs. Effective June 29, 1989. Note: this position should have appeared in the listing dated Monday, July 31, 1989; 54 FR 31598.

One Special Assistant to the Assistant Secretary for Indian Affairs. Effective July 7, 1989.

One Special Assistant to the Director, Bureau of Land Management. Effective July 13, 1989.

One Staff Assistant to the Director, Office of External Affairs, Bureau of Land Management. Effective July 25, 1989.

U.S. International Trade Commission

One Congressional Liaison to the Chairman. Effective July 28, 1989.

Department of Labor

One Special Assistant to the Assistant Secretary for Employment Standards. Effective July 3, 1989.

One Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective July 3, 1989.

One Confidential Assistant to the Deputy Secretary. Effective July 3, 1989.

One Confidential Assistant to the Assistant Secretary for Employment Standards. Effective July 3, 1989.

One Staff Assistant to the Deputy Under Secretary for International Labor Affairs. Effective July 3, 1989.

One Senior Legislative Officer to the Assistant Secretary for Congressional Affairs. Effective July 3, 1989.

One Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective July 3, 1989.

One Special Assistant to the Secretary. Effective July 3, 1989.

One Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective July 5, 1989.

One Deputy Legislative Officer to the Assistant Secretary for Congressional Affairs. Effective July 17, 1989.

One Staff Assistant to the Secretary. Effective July 17, 1989.

One Senior Legislative Officer to the Assistant Secretary for Congressional Affairs. Effective July 21, 1989.

Office of Management and Budget

One Confidential Assistant to the Associate Director for Human Resources, Veterans and Labor. Effective July 5, 1989.

One Legislative Assistant to the Associate Director for Legislative Affairs. Effective July 28, 1989.

Office of National Drug Control Policy

One Special Assistant and White House Liaison (Executive Secretariat) to the Director. Effective July 17, 1989.

Office of Personnel Management

One Counselor to the Director. Effective July 3, 1989.

One Deputy Director for Congressional Relations to the Director, Office of Congressional Relations. Effective July 3, 1989.

One Confidential Assistant to the Director, Office of Executive Administration. Effective July 11, 1989.

One Confidential Assistant to the Director. Effective July 11, 1989.

One Special Assistant for Communications to the Director. Effective July 17, 1989.

Office of U.S. Trade Representative

One Deputy Assistant U.S. Trade Representative for Congressional Affairs. Effective July 11, 1989.

Small Business Administration

One Confidential Assistant to the Administrator. Effective July 6, 1989.

Department of State

One Staff Assistant to the Under Secretary for Management. Effective July 11, 1989.

One Member, Policy Planning Staff, to the Director, Policy Planning Staff. Effective July 17, 1989.

One Special Assistant to the Director, Policy Planning Staff. Effective July 25, 1989.

One Staff Assistant to the Special Assistant to the Under Secretary for Management. Effective July 25, 1989.

One Staff Assistant to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs. Effective July 28, 1989.

One Secretary (Stenography) to the Director, Policy Planning Staff. Effective July 28, 1989.

Department of the Treasury

One Deputy to the Treasurer of the United States. Effective July 3, 1989.

One Public Affairs Specialist to the Assistant Secretary, Public Affairs and Public Liaison. Effective July 6, 1989.

One Special Assistant for Policy Research to the Deputy Assistant Secretary, Corporate Finance. Effective July 19, 1989.

One Confidential Assistant to the Deputy Secretary. Effective July 19, 1989.

One Confidential Assistant to the Assistant Secertary, Legislative Affairs. Effective July 19, 1989.

One Special Assistant to the Assistant Secretary for Policy Management. Effective July 25, 1989.

One Special Assistant to the Assistant Secretary for International Affairs. Effective July 26, 1989.

One Special Assistant to the Deputy Assistant Secretary, Corporate Finance. Effective July 26, 1989.

Department of Transportation

One Staff Assistant to the Secretary. Effective July 26, 1989.

One Public Affairs Officer to the Administrator, Federal Railroad Administration. Effective July 28, 1989.

One Staff Assistant to the Assistant Secretary for Governmental Affairs. Effective July 28, 1989.

United States Information Agency

One Special Assistant to the Director, Private Sector Committees. Effective July 6, 1989.

United States Court

Two Trial Clerks to a Judge. Effective July 6, 1989.

Department of Veterans Affairs

One Director, Intergovernmental Affairs, to the Deputy Assistant Secretary for Veterans Liaison. Effective July 21, 1989.

One Special Assistant to the Assistant Secretary for Information Resources. Effective July 28, 1989.

Authority: 5 U.S.C. 3301, 3303; E.O. 10555, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 89–20331 Filed 8–28–89; 8:45 am]

BILLING CODE 6321-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27156; File No. SR–CSE–88–5]

Self-Regulatory Organizations; Cincinnati Stock Exchange; Order Approving Proposed Rule Change Authorizing Establishment of a Signature Guarantee Program

August 21, 1989.

On August 16, 1988, the Cincinnati Stock Exchange ("CSE") filed a proposed rule change (File No. SR–CSE–88–5) under section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposal authorizes the CSE to establish and operate a signature guarantee card distribution program. The Commission published notice of the proposal in the **Federal Register** on February 22, 1989.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposal.

The proposal would authorize the CSE to establish and operate a signature guarantee [3] card distribution program. Under the program, CSE will distribute to transfer agents signature cards containing specimen signatures of individuals authorized to guarantee signatures on behalf of a CSE member. CSE also will notify transfer agents of updates it receives from its members and will provide transfer agents with new signature cards of new individuals authorized to guarantee signatures on behalf of a CSE member.

CSE believes the proposal rule change is consistent with the requirements of section 6b(5) of the Act. Specifically, CSE believes that the proposed will faster coordination with persons engaged in settling transactions in securities.

The Commission believes that the proposal is consistent with section 6(b)(5) of the Act in that it is designed to foster coordination with persons engaged in settling transactions in securities. Currently, CSE does not have a signature gurantee card distribution service and, thus, CSE members must distribute signature cards directly to more than 1200 transfer agents. The

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[1] 15 U.S.C. 78s(a) (1988).

[2] *See* Securities Exchange Act Release No. 26544 (February 14, 1989), 54 FR 7657.

[3] Transfer agents generally require that the signature of the registered holder of a stock certificate be guaranteed before it can be accepted for cancellation and reissuance. Transfer agents, also require signature guarantors to provide specimen signatures for each individual authorized to issue guarantees on behalf of the financial institution.

CSE's proposal is similar in many respects, to the signature card distribution service of other national securities exchanges.[4]

It is therefore ordered, Pursuant to section 19(b) of the Act, that the proposed rule change (File No. SR–CSE–88–5) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20252 Filed 8–28–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–27157; File No. SR–OCC–89–10]

Proposed Rule Change by The Options Clearing Corporation; Provision for the Processing of Basket Trades

August 21, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on August 14, 1989, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

File No. SR–OCC–89–10 proposes Rules pursuant to which OCC would clear and facilitate the settlement of market baskets. The Chicago Board Options Exchange, Inc. ("CBOE") has proposed in File No. SR–CBOE–88–20 to trade market baskets based on two stock market indexes.

II. Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change General

The overall purpose of the proposed rule change is to provide for the clearance and to facilitate the settlement of market baskets. Unlike options and IPs, which are securities of which OCC is the issuer, market baskets are simply contracts for the purchase and sale of the stocks comprising the basket and are not separate securities. OCC's role is to clear the Exchange transactions that it accepts, reporting the resulting transactions in the individual underlying stocks for clearance through correspondent clearing corporations, as provided in the rules.

Amendments to Existing By-Laws

Proposed amendments to Article I, Section 1 of OCC's existing By-Laws are, for the most part, made to incorporate references to market baskets. The term "market basket" is defined in paragraph (mmmm).

Articles V, VI and VIII are amended to incorporate references to market baskets. Section 5 of Article VI is amended to provide for the Corporation's acceptance of market baskets. Section 5 conditions acceptance of market basket transactions on OCC's receiving all margin payments due in respect of the transaction on the business day following the trade date. Section 7 of Article VI is amended to describe the information as to which a Purchasing Clearing Member and a Writing Clearing Member must agree in a market basket transaction.

Article VIII is amended to reflect that OCC's Non-Equity Securities Clearing Fund will cover losses suffered by OCC if a Clearing Member should default on any obligation to OCC with respect to market baskets.

Proposed Article XIX of the By-Laws

A new Article XIX that addresses market baskets is added to OCC's By-Laws. The introduction to the Article makes clear that the By-Laws in Articles I–XI apply to market baskets, except where expressly modified or made inapplicable by Article XIX. The effect on other By-Laws of each By-Law section in Article XIX is stated in brackets at the end of that section.

Article XIX, Section 1, contains definitions applicable to market baskets. Most of the definitions parallel those used with respect to IPs. The terms "purchaser" and "seller" are used instead of "holder" and "writer" to reflect the fact that market baskets are simply contracts of sale and not securities conferring ongoing rights and obligations upon holders and writers. The term "aggregate basket value" in respect of a market basket is defined as the sum of the closing market prices of each of the securities underlying the market basket on the day the market basket was accepted by OCC.

Except for the purposes of calculating margin pursuant to Rule 602A, the terms "long position" and "short position" are not used with respect to market baskets. The reason is that an opening transaction in market baskets that is not offset by a closing transaction effected in the same account on the same day results only in settlement obligations in respect of the stocks in the basket and not in a "position" in the sense that the term is used elsewhere in OCC's By-Laws and Rules. (These settlement obligations are in turn netted across accounts, as described below with reference to Rule 2001, to obtain a net obligation to receive or deliver each of the stocks in the basket.)

Section 2 conditions the acceptance of a market basket transaction on OCC's receiving margin payments in respect of the transaction on the business day immediately following the trade date. OCC retains the authority to accept a market basket for which margin has not been paid by applying certain funds of the Clearing Member that may be available to apply to the payment of any unpaid margin.

Section 3 of Article XIX states the general obligations of purchasers and sellers of market baskets.

Section 4 provides that the identity and number of shares deliverable in settlement of a market basket shall be determined by the Exchange. Should a security comprising a market basket become ineligible for settlement through a correspondent clearing corporation or should delivery of such security become impossible, unlawful or unfairly burdensome, OCC may direct that delivery of such security shall not be required and shall make such adjustments, if any, in the trade price or aggregate basket value of the market basket as it deems to be fair and reasonable under the circumstances.

Section 5 provides that OCC shall rely on the reporting authority for the market prices of the underlying securities. In the event OCC does not receive a market price for one or more underlying securities, it may either fix the market price for such securities on the basis of

[4] The New York Stock Exchange, American Stock Exchange, Midwest Stock Exchange and Philadelphia Stock Exchange offer signature guarantee card services to their members.

most recent available market prices, or it may suspend settlement obligations with respect to either the affected securities or the affected class of market baskets.

Proposed Amendments to Existing Rules

References to market baskets are being inserted where appropriate in Rules 207, 401, 603, 605, 609, 913(a) and 913(f).

Margin for market baskets will be calculated utilizing OCC's current non-equity margin system. Rule 602A is therefore amended to accommodate market baskets. In addition, the Rule is amended to make certain other minor changes.

The definition of "premium margin" is expanded to include market baskets. The definition provides that market basket premium margin within a class will be calculated on a settlement date by settlement date basis. These premium margin quantities are algebraically combined with all other premium margin quantities relating to the same class group to determine the premium margin for the class group.

The definition of "marking price" is expanded to include market baskets. Parallel changes are made in the definition of "margin interval." The description of the calculation of margin in the firm and market-maker's and specialist's accounts is expanded to accommodate market baskets.

The proposed rule change deletes language stating that each Clearing Member's obligations in respect of delivery units of physical IPs shall be margined in the firm account, because this language is made redundant by the language added to Rule 1907, which is described below.

A subparagraph is proposed to be added to state that OCC will collect margin equal to the movement in the value of market baskets between the time of the trade establishing the position and the close of business on that date if the movement is against the position of the Clearing Member, and that OCC will also give margin credit equal to that same movement if the movement is to the benefit of the Clearing Member.

The formula set forth in Rule 1001 for calculating each Clearing Member's contribution to the Non-Equity Securities Clearing Fund is being amended to include market baskets. In calculating a clearing member's proportionate share pursuant to that Rule, OCC will use the daily average of the sum of the net number of market baskets purchased or sold in each account.

As is discussed below, the proposed rule change amends Rule 1605(b) regarding the netted settlement of foreign currency options and Rule 1907(b) regarding the netted settlement of IPs to be settled by delivery of stock.

Proposed Chapter XX of the Rules

A new Chapter XX that addresses market baskets is added to OCC's Rules. Proposed Rule 2001 provides that the settlement date shall be the fifth business day after the market basket transaction is accepted. OCC's Board of Directors retains the authority to extend or postpone any market basket settlement date.

Proposed Rule 2001(b) describes the settlement of market baskets and, by and large, parallels Rule 1907(b) for IPs. As in the case of exercised IPs and foreign currency options, settlements are netted across accounts to a single net obligation to deliver or receive. OCC will report the purchase and sale of the underlying securities to the designated clearing corporation of each Clearing Member as if such securities were traded at their closing prices on the day the market basket transaction was effected. Accordingly, settlement will require the purchaser to pay through the designated clearing corporation the aggregate basket value, which is equal to the sum of the closing prices of the underlying securities. Any difference between the aggregate basket value and the trade price will be settled through OCC's cash settlement system on the settlement date in accordance with Rule 2001.

The proposed rule governing the settlement of a market basket accepted by OCC prior to an "ex" date of an underlying security is similar to the comparable rule applicable to equity options. In the event a particular underlying security becomes ineligible for settlement through a correspondent clearing corporation, OCC may direct that delivery of such underlying security be effected on a broker-to-broker basis.

Rule 2001 states that the rights and obligations of each Clearing Member to deliver or receive stock against receipt or payment of the aggregate basket value shall be deemed to be in the Clearing Member's firm account. Parallel sentences are being added to Rule 1605(b) with respect to the netted rights and obligations of Clearing Members to effect settlement of foreign currency and Rule 1907(b) with respect to the netted rights and obligations of Clearing Members to effect settlement of IPs by delivery or receipt of stock. The purpose of these provisions is to make clear that OCC will treat these settlements as being in the firm account and therefore, in the event of a Clearing Member default, will be able to apply any proceeds from such settlements without regard to the restrictions imposed, for example, by Rule 1104 with respect to the disposition of proceeds arising from positions in a customers' account.

Proposed Rule 2002 describes the treatment of market baskets to which a suspended Clearing Member is a party and, for the most part, parallels Rule 1908 for IPs. OCC's margin system will create a margin credit in the event the market moves in favor of a Clearing Member's pending market basket settlement. Accordingly, a Clearing Member effecting a buy-in is required to pay OCC the excess, if any, of the aggregate basket value over the prices actually paid in respect of the buy-in. Similarly, a Clearing Member effecting a sell-out must pay OCC the excess, if any, of the prices received on the sell-out over the aggregate basket value. OCC will place any amount so received in the suspended Clearing Member's Liquidating Settlement Account.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change and none have been received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR–OCC–89–10 in the caption above and should be submitted by September 19, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20251 Filed 8–28–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–17117; File No. 812–7293]

Mutual Benefit Life Insurance Co.; Application for Exemption

August 22, 1989.

Agency: Securities and Exchange Commission ("SEC" or "Commission").

Action: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The Mutual Benefit Life Insurance Company ("Mutual Benefit"), Mutual Benefit Variable Contract Account—11 of the Mutual Benefit Life Insurance Company (the "Account"), and Directed Services, Inc. ("DSI").

Relevant 1940 Act Sections: Applicants seek an order to permit the deduction from the Account of mortality and expense risk charges under a deferred variable annuity and an immediate variable annuity certain contract, and a guaranteed death benefit charge under a deferred variable annuity contract.

Filing Date: The Application was filed on April 11, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this Application or ask to be notified if a hearing is ordered. Any request must be received by the Commission by 5:30 p.m. on September 18, 1989. Request a hearing in writing, giving the nature of your interest, the reasons for the request and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the Commission along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary to the Commission.

Addresses: The Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549; Applicants, c/o Directed Services, Inc., P.O. Box 5179 FDR Station, New York, New York 10150–5179.

For Further Information Contact: Wendell M. Faria, Staff Attorney, at (202) 272–3450 or Clifford E. Kirsch, Acting Assistant Director, at (202) 272–2061.

Supplementary Information: Following is a summary of the Application; the complete Application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Mutual Benefit is a mutual life insurance company organized in the State of New Jersey in 1845 and presently licensed to engage in the life insurance business in all 50 states and the District of Columbia. Administrative services for these Certificates are provided at The Golden Financial Group, Inc., Customer Service Center, P.O. Box 5179, FDR Station, New York, New York 10150–5179. The Account is a separate investment account of Mutual Benefit established to act as a funding vehicle for a deferred annuity contract (the "Deferred Annuity") and an annuity certain contract (the "Annuity Certain") (referred to collectively as the "Contracts").

2. The Account is divided into divisions. Each division will invest in shares of a designated Series of the Western Capital Specialty Managers Trust (the "Trust") which is an open-end management investment company. The Trust has become registered with the Commission as an open-end management investment company and had filed a registration statement on Form N–1A. The Trust is a series-type mutual fund that contains seven Series, each of which will pursue different investment objectives and policies.

3. Subject to certain restrictions, Certificate owners are permitted to allocate the accumulation value to or from the Guaranteed Interest Division of the general account. The Guaranteed Interest Division currently credits a minimum interest at the effective rate of 4% for the Deferred Annuity and 5% for the Annuity Certain per year, compounded daily. Mutual Benefit may declare excess interest to the Guaranteed Interest Division at its sole discretion which will be guaranteed for one certificate year.

4. Western Capital Variable Advisors Corp. will serve as Manager to the Trust and will appoint investment advisers to each Series of the Trust. Pursuant to a Distribution Agreement between Mutual Benefit and DSI, a wholly owned subsidiary of The Golden Financial Group, Inc. ("GFC"), DSI will enter into a sales agreement with Western Capital Financial Group, Inc. to solicit sales of the Cetificates through registered representatives who are licensed to sell securities and variables insurance products including variable annuities. The registered representatives will be appointed by Mutual Benefit to sell the Certificates.

5. The Certificates provide for the accumulation of values on a variable basis except to the extent that a portion of the accumulation value is allocated to the Guaranteed Interest Division of the general account. Payment of annuity benefits will be on a fixed or variable basis. The variable aspects of the Certificates differ significantly from the fixed aspects in that the Certificate owner and the Annuitant assume the risk of investment gain or loss under a Certificate rather than Mutual Benefit. A Certificate owner directs the allocation of premium payments and accumulation value to the Account.

6. The Certificates are currently intended to be used in connection with a retirement plan qualified under sections 408(a) and/or 408(b) of the Internal Revenue Code or a non-qualified plan.

7. The Deferred Annuity is a group flexible payment contract which provides for an initial purchase payment and for subsequent purchase payments if the Certificate owner so desires. There is, however, no obligation to make additional payments.

8. The Annuity Certain is a group immediate annuity which provides for payment of a single premium and allows for variable annuity payments to be made to the Annuitant.

9. Deferred loading at a maximum rate of 7% of each payment is deducted from each payment for purchase-related expenses. If the payment received at issue on one Certificate or several simultaneously purchased Certificates exceeds specified limits we may reduce this load. This charge is allocated to

cover distribution expenses. All deferred loading applicable to initial or additional purchase payments or single premium payments is imposed at the time of payment but is advanced to the divisions and recovered from the accumulation value in equal installments on the first and subsequent certificate processing dates following the receipt and acceptance of the payment over a period specified in the Certificates. If the Certificate owner surrenders a Certificate, any remaining deferred loading will be deducted. The Application states that for purposes of the sales load provisions of the 1940 Act, the deferred loading is a front-end sales load. This is because the amount of the sales load is deducted from payments when made but is advanced back to the division and recovered in installments. Applicants are not relying on Rule 6c–8 in connection with this charge.

10. Mutual Benefit makes a deduction from the accumulation value for premium or other state and local taxes as they are incurred. Currently, these charges range up to 3%.

11. In the Deferred Annuity an administrative charge of $40 will be deducted from the accumulation value of a Contract each year to reimburse Mutual Benefit for the anticipated actual cost of administration expenses relating to the Contract. The amount of the administrative charge may be changed by Mutual Benefit to meet the anticipated actual cost of administrative expenses relating to the Contract; however, the amount of the administrative charge is guaranteed not to exceed $60 annually.

12. At any time while a Certificate is in effect, part of or all of the values under a Certificate may be surrendered for cash payment, or alternatively, the values under the Certificates may be applied to annuity options available at the time of surrender.

13. The Certificates provide that a maximum mortality and expense risk charge equal to 0.002477% of the asset values in each division of the Account will be deducted on a daily basis (equivalent to an annual charge of 0.90%). For the Deferred Annuity, approximately 0.55% is allocated to the mortality risk and 0.35% is allocated to the expense risk. In the Annuity Certain, approximately 0.45% is allocated to the mortality risk and 0.45% is allocated to the expense risk. The mortality risk assumed by Mutual Benefit arises from its obligation to continue to make annuity payments under the Certificates or income plan provisions of the Certificates, determined in accordance with the guaranteed annuity tables and other provisions of the Certificate, regardless of how long each annuitant lives and regardless of how long all payees as a group live. The mortality risk under the Deferred Annuity is the risk that, after annuitization or upon selection of an annuity option with a life contingency, annuitants will possibly live longer than Mutual Benefit's actuarial projections indicate, resulting in higher than expected payments during the payout phase, since the payment options are guaranteed not to be less than the tables discussed in the Deferred Annuity. In the Annuity Certain, the mortality risk assumed by Mutual Benefit relates to the fact that, at all times, Mutual Benefit will offer the option to convert the Annuity Certain, which does not provide for payments based on life contingencies, to one or more annuity contracts that provide for payments based on life contingencies. The mortality risk assumed by Mutual Benefit is the risk that annuitants, or beneficiaries after the death of the annuitant, will choose one such option and will possibly live longer than Mutual Benefit's actuarial projections indicate, resulting in higher than expected payments during the payout phase, since any payment option is guaranteed not to be less than the tables discussed in the Annuity Certain. In addition, Mutual Benefit assumes a risk that the charges for the administrative expenses may not be adequate to cover such expenses.

14. The Deferred Annuity also provides for a guaranteed death benefit annually. This charge is an account charge imposed to compensate Mutual Benefit for the risk that the minimum guaranteed death benefit due under a Deferred Annuity when the annuitant dies during the accumulation phase may exceed the accumulation value which is the normal death benefit otherwise payable. The guaranteed death benefit is the accumulated value of the purchase payments paid minus the accumulated value of the partial withdrawals taken. The guaranteed death benefit charge for the Certificates is based on the amount of the guaranteed death benefit and is imposed at a rate of $0.60 per $1,000 of guaranteed death benefit per year. However, the Account may offer other variable annuity contracts in the future. These variable annuity contracts may charge up to $1.20 per $1,000 of guaranteed death benefit per year. The guaranteed death benefit charge is based on the amount of the guaranteed death benefit and is approximately equal to (assuming a hypothetical gross return of 5% annually) 0.05% of net assets. For higher hypothetical gross returns this charge, when expressed as an asset charge, would be less, while for lower hypothetical gross returns it would be more.

15. Applicants represent that they have reviewed publicly available informtion regarding the level of the mortality and expense risk and guaranteed death benefit charges under comparable variable annuity contracts currently being offered in the industry, taking into consideration such factors as current charge levels or annuity rate guarantees and the markets in which the Certificates will be offered. Based upon the foregoing, Applicants further represent that the Maximum charges under the Certificates are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

16. Mutual Benefit has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Certificates will benefit the Account and the Certificate owners. Mutual Benefit will keep and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

17. Applicants further represent that the Account will invest only in underlying funds which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of the funds, formulate and approve any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses.

Applicants' Conditions

Applicants agree that if the requested order is granted such order will be expressly conditioned on Applicants' compliance with the undertakings set forth above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20250 Filed 8–28–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Order Granting Application To Strike From Listing and Registration; The New York Stock Exchange, Inc. (Western Savings and Loan Association, Permanent Reserve Guarantee Stock, $1.00 Par Value) File No. 1–0000

August 21, 1989.

The New York Stock Exchange, Inc. ("Exchange") has filed an application

with the Securities and Exchange Commission ("Commission") pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(c) promulgated thereunder to strike the above specified security from listing and registration thereon.

The reasons alleged for striking this security from listing and registration include the following:

In the opinion of the Exchange, the Common Stock of Western Savings and Loan Association ("Company") is no longer suitable for continued listing and dealings on the Exchange. Information supplied by the Company or taken from other sources believed by the Exchange to be reliable indicated that on June 16, 1989 the Federal Deposit Insurance Corporation announced that the Company had been placed in receivership and that the mutual association created to maintain the normal operations of the Company would not assume any obligations of the Company's stockholders. It was further stated that the Company had assets of $5.78 billion and total liabilities of $5.99 billion.

Exchange Rule 499.20, Subsection 9 (Reduction in Operating Assets and/or Scope of Operations) states the Exchange would normally give consideration to suspending or removing from the list a security of a company "when the operating assets have been or are to be substantially reduced such as by sale, lease, spin-off, distribution, discontinuance, abandonment, destruction, condemnation, seizure or expropriation, or the company has ceased to be an operating company or discontinued a substantial portion of its operations or business for any reason whatsoever, and whether or not any of the foregoing results from action by the company, related parties, or persons unrelated to the company."

The Commission, having considered the facts stated in the application and having due regard for the public interest and protection of investors, orders that said application be, and it hereby is, granted, effective at the opening of business on August 21, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–20320 Filed 8–28–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17115; 811–5409]

Prudential Guaranteed Adjustable Fund, L.P.; Application for Deregistration

August 21, 1989.

Agency: Securities and Exchange Commission ("SEC").

Action: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Prudential Guaranteed Adjustable Fund, L.P. ("Applicant").

Relevant 1940 Act Section: Deregistration under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application was filed on Form N–8F on August 10, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 14, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

Addresses: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20592.

For Further Information Contact: Patricia Copeland, Legal Technician, (202) 272–3009, or Karen L. Skidmore, Branch Chief, (202) 272–3023 (Office of Investment Company Regulation).

Supplementary Information: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a limited partnership under the laws of the state of Delaware. On December 3, 1987, Applicant registered as an open-end diversified management company under the 1940 Act. On that same date, Applicant filed a registration statement under the Securities Act of 1933 on Form N–1A with respect to an indefinite number of Series A and Series B shares of limited partnership interest. The registration statement never became effective and was withdrawn by Applicant on February 28, 1989. Applicant has never made a public offering.

2. On August 7, 1989, Applicant's General Partners adopted a resolution authorizing the deregistration of Applicant under the 1940 Act.

3. Aside from an annual Delaware tax which may become due and payable at the time Applicant files its certificates of cancellation in that state, Applicant has no debts or other liabilities which remain outstanding. In connection with the organization of Applicant as a limited partnership under Delaware law, an affiliated person of Applicant joined in the partnership agreement as an original limited partner, and such affiliated person might be deemed to be a securityholder of Applicant. Applicant states that it does not currently have any assets nor is it a party to any litigation or administrative proceeding, and it does not propose to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–20249 Filed 8–28–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17114; 811–5776]

Strong U.S. Government Reserves, Inc.; Application for Deregistration

August 21, 1989.

Agency: Securities and Exchange Commission ("SEC").

Action: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Strong U.S. Government Reserves, Inc. ("Applicant").

Relevant 1940 Act Section: Deregistration under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application was filed on Form N–8F on July 10, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's

Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 14, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

Addresses: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 100 Heritage Reserve, Menomonee Falls, Wisconsin 53051.

For Further Information Contact: Patricia Copeland, Legal Technician, (202) 272-3009, or Karen L. Skidmore, Branch Chief, (202) 272-3023 (Office of Investment Company Regulation).

Supplementary Information: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a corporation registered under the laws of the state of Wisconsin. On March 1, 1989, Applicant registered as an open-end diversified management investment company under the 1940 Act. On that same date Applicant filed a registration statement under the Securities Act of 1933 on Form N-1A with respect to an indefinite number of the Applicant's common stock, $.001 par value. The registration statement never became effective and was withdrawn by Applicant on July 21, 1989. Applicant has never made a public offering of its securities.

2. Applicant's investment adviser, Corneliuson Capital Management, Inc., paid all outstanding debts.

3. Applicant states that it does not currently have any shareholders, it does not have any assets, debts or liabilities, it is not a party to any litigation or administrative proceeding, and it does not propose to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-20248 Filed 8-28-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89-065]

Towing Safety Advisory Committee; Meeting of Subcommittee

AGENCY: Coast Guard, Department of Transportation.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92-463; U.S.C. App. I), notice is hereby given of a meeting of the following subcommittee of the Towing Safety Advisory Committee (TSAC). The subcommittee on Tug-Barge Construction, Certification and Operations will meet on September 25, 26, 27 and 28, 1989 in Room 2230, U.S. Department of Transportation, 400 7th Street SW., Washington, DC. The meeting is scheduled to begin at 9:30 a.m. and end at 4:00 p.m. each day. The agenda for the meeting follows:

1. Development of suggested improvements in the provisions of 46 CFR Part 151.

2. Evaluate the adequacy of current 46 CFR Part 31 inspection intervals for tank barges.

3. Evaluate the adequacy of U.S. Coast Guard policy regarding the application of "Rivers" structural rules for tank barges that regularly ply a "Lakes, Bays, and Sounds" route or an "Oceans" route within the boundary line.

4. Evaluate requiring a buckling analysis for existing barges with "Rivers" scantlings as a condition of continuing operation on "Lakes, Bays, and Sounds" or "Oceans" routes within the boundary line.

5. Evaluate requiring high level alarms in cargo tanks on tank barges to reduce the incidence of cargo tank overfilling and overpressurization.

6. Evaluate the progress in identifying problems confronting the towing industry that could result from a full conversion to 1969 Tonnage Convention tonnage. Consider information concerning tonnage thresholds and related matters that the Coast Guard obtained during public meetings. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from Mr. Gene Hammel, Executive Director of TSAC at U.S. Coast Guard, Headquarters, G-MP-2, Room 2414, 2100 Second Street SW., Washington, DC 20593-0001 or by calling (202) 267-1406.

Dated: August 22, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-20246 Filed 8-28-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Proposed Modification of Airport Improvement Program Grant Improvement

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Notice of Proposed Modification of Airport Improvement Program Grant Assurances.

SUMMARY: The FAA proposes to modify the standard grant assurances required of a sponsor receiving a grant under the Airport Improvement Program (AIP). This modification is necessary to allow FAA to bring up to date the list of Advisory Circulars included as standards without having to publish them in the Federal Register. It will also allow FAA to delete from the grant program two separate certifications presently required to be prepared by grant recipients by adding them to the standard set of assurances. These modifications will provide for new assurances in all grants issued under the Airport Improvement Program after October 1, 1989. The Secretary of Transportation is required to provide notice in the Federal Register and an opportunity for the public to comment upon proposals to modify assurances or to require any additional assurances under AIP pursuant to subsection 511(f) of the Airport and Airway Improvement Act of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100-223.

DATES: These proposed modifications to the Grant Assurances would be effective October 1, 1989. Comments must be submitted on or before September 28, 1989.

ADDRESS: Comments may be delivered or mailed to the Grants-in-Aid Division, APP-500, Room 618, FAA, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Benedict D. Castellano (Airports Program Specialist); Telephone (202) 267-8822.

SUPPLEMENTARY INFORMATION: The Secretary must receive certain assurances from the sponsor (applicant) under *The Airport and Airway*

Improvement Act of 1982, as amended by *The Airport and Airway Safety and Capacity Expansion Act of 1987*, Pub. L. 100–223. These assurances are submitted as part of the application for Federal assistance and are incorporated in all grant agreements by reference. The current assurances were published on February 3, 1988 (53 FR 3104) and amended on September 6, 1988 (53 FR 34361). As need dictates, these assurances must be amended from time to time to reflect new Federal requirements or to resolve problems arising in the grant program. Notice of such proposed changes are published in the Federal Register and an opportunity provided for comment by the public. The Federal Aviation Administration (FAA) is planning to modify the assurances currently being used in order to reflect some changes in the general requirements.

FAA uses three separate sets of standard assurances: one for airport sponsors (owners/operators); one for planning agency sponsors; and one for nonairport sponsors.

Assurance 1, *General Federal Requirements*, of all three sets of assurances is proposed to add the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D) to the list under Federal Legislation. Additionally, Assurance 36 of the Airport Sponsor Assurances, Assurance 13 of the Planning Agency Sponsor Assurances, and Assurance 22 of the Non-Airport Sponsor Assurances, entitled *Durg-Free Workplace*, are proposed which will serve as the certification required by sponsors to comply with the Drug-Free Workplace Act.

Assurance 34 of the Airport Sponsor Assurances, titled *Policies, Standards, and Specifications*, is proposed to delete the list of Advisory Circulars presently included. Instead of the Circulars being listed in the assurance, sponsors would be provided a dated listing, entitled the "Current FAA Advisory Circulars for AIP Projects." This listing would be updated periodically by FAA as advisory circulars are changed and updated. The FAA field office would provide copies of the latest list to sponsors at the preapplication stage and this list would be attached to the sponsor's application package to ensure that a sponsor is aware of current requirements. This list would be incorporated in the grant agreement through reference to the application.

Assurance 35 of the Airport Sponsor Assurances and Assurance 21 of the Nonairport Sponsor Assurances, entitled *Relocation and Real Property Acquisition*, are proposed. This assurance would eliminate the need for the current Relocation and Real Property Acquisition Assurances, FAA Form 5100–40, which is presently required of the sponsor as a separate assurance whenever there is a project which includes the acquisition of real property or the relocation of persons.

Airport Improvement Program Grant Assurances

1. The Airport Sponsor Assurances are proposed to be amended as follows:

a. Assurance No. C.1. is proposed to be amended to read as follows:

C. 1. General Federal Requirements

* * * * *

u. Drug-Free Workplace Act of 1988

b. By proposing to revise Assurance 34 to read:

34. Policies, Standards, and Specifications. It will carry out the project in accordance with the policies, standards, and specifications approved by the Secretary including, but not limited to the advisory circulars listed in the "Current FAA Advisory Circulars for AIP Projects," dated _____ and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

c. By proposing to add Assurance 35 to read:

35. Relocation and Real Property Acquisition. (1) It will be guided in acquiring real property, to the greatest extent practicable under State Law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subparts D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement comparable replacement dwellings to displaced person in accordance with Subpart E of 49 CFR Part 24.

d. By proposing to add Assurance 36 to read:

36. Drug Free Work Place. It will provide a drug-free workplace at the site of work specified in the grant application in accordance with 49 CFR Part 29 by (1) publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the sponsor's workplace and specifying the actions that will be taken against its employees for violation of such prohibition; and (2) establishing a drug-free awareness program to inform its employees about the dangers of drug abuse in the workplace and any available drug counseling, rehabilitation, and employee assistance programs; (3) notifying the FAA within ten days after receiving notice of an employee criminal drug statute conviction for a violation occurring in the workplace, and (4) making a good faith effort to continue to maintain a drug-free workplace.

2. The Planning Agency Sponsors Assurances are proposed to be amended as follows:

a. Assurance No. C. 1. is proposed to be amended to read as follows:

C. 1. General Federal Requirements

* * * * *

i. Drug-Free Workplace Act of 1988

b. By proposing to add Assurance 13 to read:

13. Drug Free Work Place. It will provide a drug-free workplace at the site of work specified in the grant application in accordance with 49 CFR Part 29 by (1) publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the sponsor's workplace and specifying the actions that will be taken against its employees for violation of such prohibition; and (2) establishing a drug-free awareness program to inform its employees about the dangers of drug abuse in the workplace and any available drug counseling, rehabilitation, and employee assistance programs; (3) notifying the FAA within ten days after receiving notice of an employee criminal drug statute conviction for a violation occurring in the workplace, and (4) making a good faith effort to continue to maintain a drug-free workplace.

3. The Nonairport Sponsor Assurances are proposed to be amended as follows:

a. Assurance No. C.1. is proposed to be amended to read as follows:

C. 1. General Federal Requirements

* * * * *

u. Drug-Free Workplace Act of 1988

b. By proposing to add Assurance 21 to read:

21. Relocation and Real Property Acquisition. (1) It will be guided in acquiring real property, to the greatest extent practicable under State Law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subparts D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement comparable replacement dwellings to displaced person in accordance with Subpart E of 49 CFR Part 24.

c. By proposing to add Assurance 22 to read:

22. Drug Free Work Place. It will provide a drug-free workplace at the site of work specified in the grant application in accordance with 49 CFR Part 29 by (1)

publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the sponsor's workplace and specifying the actions that will be taken against its employees for violation of such prohibition; and (2) establishing a drug-free awareness program to inform its employees about the dangers of drug abuse in the workplace and any available drug counseling, rehabilitation, and employee assistance programs; (3) notifying the FAA within ten days after receiving notice of an employee criminal drug statute conviction for a violation occurring in the workplace, and (4) making a good faith effort to continue to maintain a drug-free workplace.

Issued in Washington, DC, on August 22, 1989.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 89-20266 Filed 8-28-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORATION

General Aviation Compliance and Enforcement

AGENCY: Federal Aviation Administration (FAA)/DOT.

ACTION: Notice of open forums and request for comments.

SUMMARY: This notice announces FAA's intent to evaluate its General Aviation Compliance and Enforcement Program. The public can participate in this evaluation: (1) by attending and/or speaking at an open forum; or (2) by written comments.

The vehicle for this evaluation will be a System Safety and Efficiency Review (SSER), conducted by the Office of the Associate Administrator for Aviation Safety. Areas of review will include, but will not be limited to, sanction guidelines, FAA and industry/public attitudes, enforcement effectiveness, Surveillance Program, and the Accident Prevention Program.

DATE: Written comments should be received on or before November 15, 1989.

ADDRESS: Send all written comments to: Federal Aviation Administration, Association Administrator for Aviation Safety, Washington, DC 20591, Attention: ASQ-1.

Background

SSER's are comprehensive, interdisciplinary evaluations conducted under the leadership of the FAA's Associate Administrator for Aviation Safety. Teams consists of highly qualified technical representatives from FAA and other units of Government, and the aviation community. SSER's review specific issues in order to improve aviation safety and efficiency, and address air traffic control, flight standards, aircraft certification, airway facilities, civil aviation security and airport certification, plus the activities of airport operators, air carriers and others. The SSER of FAA's General Aviation Compliance and Enforcement Program will be conducted to determine its effectiveness in promoting safety in general aviation. This review will not involve an evaluation of the agency's enforcement policies for air carriers. All SSER's are preceded by listening sessions at which the aviation community and other interested persons and organizations are encouraged to present their views.

The review will be conducted in three phases: (1) data gathering and analysis; (2) listening sessions at various locations around the country; and (3) technical evaluation of specific compliance and enforcement issues, including those identified in listening sessions or in written comments.

Invitation to Participate

Interested parties and individuals are invited to participate in this SSER by submitting written comments to the address shown above, or by attending the listening sessions shown below. Speakers and written commenters are asked to identify issues which they believe should be examined in the SSER. Reservations or formal presentations are not necessary. Comments will be recorded, but no transcript will be produced. Dates, times and locations for the listening sessions are shown below:

Monday August 28, 1989 (7:30 p.m.), Long Beach Hyatt Regency, 200 South Pine Avenue, Long Beach, California.

Tuesday August 29, 1989 (7:30 p.m.), Best Western Airtel Plaza Hotel, 7277 Valjean Avenue, Van Nuys, California.

Thursday September 7, 1989 (7:00 p.m.), Park Marriott, 300 Bare Blvd., Parkridge, New Jersey.

Tuesday September 26, 1989 (7:30 p.m.), Ramada In—Southeast, 6101 East 87th St., Kansas City, Missouri.

Wednesday September 27, 1989 (7:30 p.m.), Sheraton North Shore Inn, 933 Skokie Blvd., Northbrook, Illinois.

Thursday September 28, 1989 (7:30 p.m.), Holiday Inn, 17040 South Halsted, Harvey, Illinois.

Thursday October 5 (10:00 a.m. to Noon), Georgia World Congress Center, Atlanta, Georgia.

Friday October 20, 1989 (11: a.m.-12:30 p.m.), Buena Vista Palace Hotel, Lake Buena Vista, Florida.

Charles H. Huettner,

Deputy Association Administrator for Aviation Safety.

[FR Doc. 89-20267 Filed 8-24-89; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-89-34]

Petition for Exemption; Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for examption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requriements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither pubication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before September 18, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-2132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 22, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25210.
Petitioner: Air Transport Association of America.
Regulations Affected: 14 CFR 63.39(b) (1) and (2) and 121.425(a)(2)(i).
Description of Relief Sought: To extend Exemption No. 4901 that allows Part 121 certificate holders to train and check flight engineer candidates in the performance of the airplane preflight inspection using advanced pictorial means instead of the airplane. The exemption also permits Part 121 certificate holders and operators of Part 63 flight engineer schools to complete training and checking of flight engineer applicants in an appropriate simulator instead of taking that portion of the practical test in an airplane in flight. Exemption No. 4901 will expire on January 31, 1990.

Docket No.: 25971.
Petitioner: National Association of Flight Instructors.
Sections of the FAR Affected: 14 CFR 135.251.
Description of Relief Sought: To allow the petitioner's members to submit their anti-drug programs no later than July 1, 1991 (instead of April 15, 1990) and to begin implementation of the program no later than November 1, 1991.

Docket No.: 073CE.
Petitioner: Dornier Seastar Gmbh and Company.
Sections of the FAR Affected: 14 CFR 23.807(d)(1).
Description of Relief Sought: To allow the passenger entrance door of the Dornier Seastar to function as a non-floor-level emergency exit.

Docket No.: 074CE.
Petitioner: Dornier Seastar Gmbh and Company.
Sections of the FAR Affected: 14 CFR 23.807(d)(1)(i).
Description of Relief Sought: To allow petitioner an exemption from the requirement to have an emergency exit on the same side of the cabin as the passenger entrance door.

Docket No.: 21882.
Petitioner: China Airlines Limited.
Sections of the FAR Affected: 14 CFR 61.77 (a) and (b) and 63.23 (a) and (b).
Description of Relief Sought/ Disposition: To extend Exemption No. 4849 that allows the issuance of U.S. special purpose pilot and flight engineer certificates to petitioner's airmen, without meeting the requirement that they hold a current foreign certificate or license issued by a foreign contracting state to the Convention on International Civil Aviation.
GRANT, August 14, 1989, Exemption No. 4849A.

Docket No.: 24540.
Petitioner: Union Camp Corporation.
Regulations Affected: 14 CFR 91.45.
Description of Relief Sought/ Disposition: To extend Exemption No. 4468 that allows petitioner to perform ferry flights with one engine inoperative from time to time, as the necessity arises, without the requirement to obtain a ferry permit for each flight.
GRANT, August 16, 1989, Exemption No. 4468B.

Docket No.: 25733.
Petitioner: Helicopters, Unlimited.
Regulations Affected: 14 CFR 135.337(a)(5).
Description of Relief Sought/ Disposition: To allow Mr. Bennie F. Harris to perform the duties of Flight Instructor and Check Airman for petitioner using a Class III Medical Certificate.
DENIAL, August 4, 1989, Exemption No. 5088.

Docket No.: 2577b.
Petitioner: Lynch Flying Service, Inc.
Regulations Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To allow properly certificated and trained pilots employed by petitioner to remove and replace passenger seats and ambulatory stretcher and base assemblies in the Cessna 400 series aircraft operated by the peititioner.
PARTIAL GRANT, August 11, 1989, Exemption No. 5085.

Docket No.: 25869.
Peitioner: Air Berlin, Inc.
Sections of the FAR Affected: 14 CFR part 121, Appendix I.
Description of Relief Sought/ Disposition: To allow petitioner to submit an anti-drug program to the FAA after the 240-day period after December 21, 1988, as required by Appendix I.
PARTIAL GRANT, August 15, 1989, Exemption No. 5086.

[FR Doc. 89-20268 Filed 8-28-89; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

International Revenue Service (IRS)

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on September 13 & 14, 1989. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 8:30 a.m. on Wednesday, September 13 and 8:30 a.m. on Thursday, September 14, 1989. The agenda will include the following topics:

Wednesday, September 13, 1989

Information Systems Development

Report on Registration of Commercial Preparers

Human Resources Traning

Complexity of Regulations and Issues

Thursday, September 14, 1989

Private Rulings Process

Ad Hoc Topics, Q & A

Note: Last minute changes to the day or order of topic discussion are possible and could prevent effective advance notice.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Robert F. Hilgen, Assistant to the Senior Deputy Commissioner no later than September 6, 1989. Mr. Hilgen may be reached on (202) 566-4143 (not toll-free).

If you would like to have the committee consider a written statement, please call or write Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, Internal Revenue Service, 1111 Constitution Avenue, NW., C:SD Room 3014, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, (202) 566-4143 (Not toll-free).

Fred T. Goldberg, Jr.,
Commissioner.

[FR Doc. 89-20237 Filed 8-28-89; 8:45 am]
BILLING CODE 4830-01-M

Office of Thrift Supervision

Summit First Federal Savings and Loan Association; Final Action, Denial of Conversion Application

Notice is hereby given that on August 9, 1989, the Director of the Office of Thrift Supervision denied the application of Summit First Federal Savings and Loan Association, Summit, Illinois ("Association"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion and acquisition of the Association by Rydan Financial Corporation, Summit, Illinois.

By The Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-20316 Filed 8-28-89; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. USIA is required to certify the eligibility of foreign citizen for J-1 visas so that they may visit the United States under one of USIA's Exchange-Visitor programs. USIA is requesting approval of the extension of a program OMB 3116-0008, which provides J-1 visas for Exchange-Visitor programs. Respondents will be required to respond only one time.

DATE: On or before September 28, 1989.

Copies: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Debbie Knox, United States Information Agency, to M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 485-7503; and OMB review: Mr. Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Title: "Certificate of Eligibility for Exchange Visitor (J-1) Status."

Form Number: IAP-66.

Abstract: This information collection is intended to facilitate the efforts of an Exchange-Visitor sponsor, who sends the form to an individual abroad so that he or she may take it to the nearest American Consul to receive a J-1 visa.

Proposed Frequency of Responses:

No. of Respondents	200,000
Recordkeeping Hours	450
Total Annual Burden	60,450

Dated: August 22, 1989.

Ledra Dildy,

Federal Register Liaison.

[FR Doc. 89-20335 Filed 8-28-89; 8:45 am]

BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Determination; Picasso and Braque: Pioneering Cubism

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Picasso and Braque: Pioneering Cubism" from the U.S.S.R. (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Museum of Modern Art in New York, New York beginning on or about September 20, 1989 to on or about January 16, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202-485-8827, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Dated: August 23, 1989.

Alberto J. Mora,

General Counsel.

[FR Doc. 89-20334 Filed 8-28-89; 8:45 am]

BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Determination; When All the World Was a Stage: Russian Constructivist Theatre Design

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "When All The World Was A Stage: Russian Constructivist Theatre Design" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign leaders. I also determine that the temporary exhibition or display of the listed exhibit objects at the J.B. Speed Art Museum in Louisville, Kentucky, beginning on or about September 12, 1989 to on or about October 22, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: August 23, 1989.

Alberto J. Mora,

General Counsel.

[FR Doc. 89-20333 Filed 8-28-89; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of System Notice

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) is amending a system of records entitled "Administrator's Official Correspondence Records" (75VA001B) which is set forth on page 822 of the

[1] A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/485-8827, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Federal Register publication "Privacy Act Issuances, 1987 Compilation, Volume V." The system is being amended to include magnetic disk as a method of storge.

This notice also corrects an administrative oversight in the initial publication which inadvertently omitted the paragraph "Categories of Individuals Covered by the System."

To reflect the elevation to Department level, the name of the system is changed to "Secretary's Official Correspondence Records". All references to "Veterans Administration" are changed to "Department of Veterans Affairs" and references to the "Administrator" are changed to "Secretary" throughout the notice. The full text of the notice is being republished.

These changes are adminstrative in nature, therefore, no public comment is required.

Approved: August 21, 1989.

Edward J. Derwinski,

Secretary.

Notice of Amendment to System of Records

The system identified as 75VA001B "Administrator's Official Correspondence Records" appearing on page 82 of the Federal Register publication "Privacy Act Issuances, 1987 Compilation, Volume V'" is revised as follows:

75VA001B

SYSTEM NAME:

Secretary's Official Correspondence Records.

SYSTEM LOCATION:

Records are maintained in the Office of the Secretary, Executive Secretariat (001B), VA Central Office, Washington, D.C. 20420 with copies located in various other offices throughout the Department of Veterans Affairs (VA) Central Office and field stations. (Address locations are listed in VA Appendix 1 at the end of this document.) The Office of Administration, Safety and Office Support Services (03) keeps records on magnetic media.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual citizens (veteran and nonveteran), VA employees, organizations, agencies of Federal, state and local governments, and public officials who have sent correspondence to VA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) may include: (1) Names of individuals (e.g., private citizens, veterans, public officials, organizations); (2) writers' social security number and/or veterans' claim number; (3) inquires or correspondence sent to the Secretary of Veterans Affairs by individuals; (4) information pertinent to decisions or responses given by the Secretary, administration heads or staff office directors; and (5) copies of the decisions or responses of the Secretary, administration heads or staff office directors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, 210(C).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The records of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the request of that individual.

2. Any information in this system from correspondence or inquiries sent to the Secretary of Veterans Affairs may be disclosed to Federal or state agencies at the request of the correspondent or inquirer in order for those agencies to help the correspondent with his or her problem. The information disclosed may include the name and address of the correspondent or inquirer and details concerning the nature of the problem specified in the correspondence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records of inquiries and correspondence are maintained on paper documents in individual file folders in the Office of the Secretary. Data files supporting the automated system are stored in a secured area on magnetic disk and tape.

RETRIEVABILITY:

Records are maintained in alphabetical order by last name of the individual correspondent. When appropriate, records are also filed alphabetically by name of member of Congress representing the correspondent. Access to the automated system is via terminals located in the secured area referred to in safeguards. Standard security precautions are used to prohibit access to only authorized personnel.

SAFEGUARDS:

Records are maintained in a manned room during working hours. During nonworking hours, there is limited access to the building with visitor control by security personnel, and the room where the records are kept is locked. Access to the records is only authorized to VA personnel on a need-to-know basis.

RETENTION AND DISPOSAL:

In the Office of the Secretary, records retrieved by last name of members of Congress are retained in the Secretary's Office for one current year than retired to inactive storage in VA and Federal Archives and Records Center for ten years. All other records in this system are retained in VA for five years then retired to the Washington National Records Center where they are retained for 20 years. Thereafter, they are offered to National Archives for accessioning. After five years automated files are maintained indefinitiely on a history file in the correspondence tracking system.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Secretary, Executive Secretariat (001B), VA Central Office, Washington, DC 20420.

NOTIFICATION PROCEDURE:

An indvidual who wishes to determine whether a record is being maintained by the Office of the Secretary (001B) under his or her name or other personal identifier or wants to determine the contents of such records should submit a written request or apply in person to Executive Secretariat (001B).

RECORD ACCESS PROCEDURES:

An individual who seeks access to or wishes to contest records maintained under his or her name or other personal identifier may write or call or visit the Executive Secretariat.

CONTESTING RECORDS PROCEDURES:

(See Record Access Procedures Above.)

RECORD SOURCE CATEGORIES:

Individuals (veterans and nonveterans), attorneys, employees, members of Congress, local and state officials and various private and public organizations.

[FR Doc. 89-20288 Filed 8-28-89; 8:45 am]

BILLING CODE 8320-01

Sunshine Act Meetings

Federal Register
Vol. 54, No. 166
Tuesday, August 29, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 31917.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 3:00 p.m., Tuesday, August 30, 1989.

CHANGE IN THE MEETING: The Commission has cancelled the closed meeting to discuss a rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, Deputy Secretary of the Commission.

Lynn K. Gilbert,
Deputy Secretary of the Commission.
[FR Doc. 89-20471 Filed 8-25-89; 4:05 pm]
BILLING CODE

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:25 a.m. on Thursday, August 24, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) Matters relating to the failure of an insured bank; and (2) matters relating to the Corporation's liquidation activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman and Mr. Darrell W. Dochow, acting in the place and stead of Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 500, 17th Street, NW., Washington, DC.

Dated: August 25, 1989.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 89-20427 Filed 8-25-89; 12:39 pm]
BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

* * * * *

"FEDERAL REGISTER" NUMBER: 89-19452.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, August 24, 1989, 10 a.m.

The following item was withdrawn from the above meeting:

Regulations: 11 CFR Parts 4 and 5—Notice of Proposed Rulemaking.

The following items were added to the above meeting:

Reconsideration of Draft Final Rules: 11 CFR § 100.7(b)(8), § 100.8(b)(9) and § 110.4(a)

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 89-20459 Filed 8-25-89; 2:32 pm]
BILLING CODE 6715-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 28, September 4, 11, and 18, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 28

There are no meetings scheduled for the Week of August 28.

Week of September 4—Tentative

There are no meetings scheduled for the Week of September 4.

Week of September 11—Tentative

Thursday, September 14

10 a.m.
Briefings on Status of NRC Technical Training Programs (Public Meeting)
2 p.m.
Briefing on Emerging Technical Issues (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 15

9 a.m.
Briefing on Status of Maintenance Initiatives and Schedule (Public Meeting)

Week of September 18—Tentative

Wednesday, September 20

10 a.m.
Briefing on EPRI Design Requirements Document for Advanced Light Water Reactors (Public Meeting)

Thursday, September 21

10 a.m.
Briefing on Study of Adequacy of Regulatory Oversight of Materials Under a General License (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492-1661.

Dated: August 24, 1989.
William M. Hill, Jr.,
Office of the Secretary.
[FR Doc. 89-20456 Filed 8-25-89; 2:13 pm]
BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:07 a.m. on Thursday, August 24, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session to consider (1) matters regarding the Corporation's corporate activities; and (2) matters relating to the resolution of certain depository institutions placed in conservatorship under the joint regulatory oversight program.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman and Mr. Darrell W. Dochow, acting in the place

in stead of Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: August 25, 1989.

Resolution Trust Corporation.

Robert E. Feldman,

Acting Executive Secretary.

0009-RTC

[FR Doc. 89-20426 Filed 8-25-89; 12:39 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 54, No. 164
Tuesday, August 29, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV-89-075]

Irish Potatoes Grown in Designated Areas in California and Oregon; Proposed Rule to Revise Handling Requirements for Certain Small Sized Potatoes and Establish Reporting Requirements for Shipments to Processors

Correction

In proposed rule document 89-19540 beginning on page 34522 in the issue of Monday, August 21, 1989, make the following correction:

On page 34522, in the second column, under **DATES:**, "September 20, 1990" should read "September 20, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ES89-32-000, et al]

Utilicorp United Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 89-18952 beginning on page 33268 in the issue of Monday, August 14, 1989, make the following correction:

On page 33270, in the first column, under **17. Tucson Electric Power Co.**, the Docket No. should read, "[Docket No. ER89-471-000]".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 85P-0584]

Cheeses: Amendment of Standards of Identity To Permit Use of Antimycotics on the Exterior of Bulk Cheeses During Curing and Aging and to Update the Formats of Several Standards

Correction

In rule document 89-18225 beginning on page 32050 in the issue of Friday, August 4, 1989, make the following corrections:

§ 133.108 [Corrected]

1. On page 32053, in the first column, in § 133.108(d)(2), in the fifth line, "appropriate" was misspelled.

§ 133.146 [Corrected]

2. On page 32056, in the second column, in § 133.146 (d)(3)(iii), at the end of the sixth line, remove "xx".

3. On the same page, in the same column, in § 133.146(d)(4)(i), remove the quotation marks at the end of the sentence.

§ 133.160 [Corrected]

4. On page 32057, in the first column, in § 133.160(a), in the last sentence, "diary" should read "dairy".

5. On the same page, in the second column, in § 133.160(d)(1), in the third line, remove the colon, and insert a comma.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASO-15]

Alteration of Jet Routes and Compulsory Reporting Points

Correction

In rule document 89-18124 beginning on page 31937 in the issue of Thursday, August 3, 1989, make the following correction:

§ 71.209 [Corrected]

On page 31938, in the second column, in § 71.209, "**QUID [Amended]**" should read "**SQUID [Amended]**".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 89-AEA-8]

Proposed Alteration of Jet Route J-8

Correction

In proposed rule document 89-18126 beginning on page 31967 in the issue of Thursday, August 3, 1989, make the following corrections:

On page 31968, in the second column, in § 75.100, "**j-8 [Amended]**" should read "**J-8 [Amended]**"; and under that heading, in the third line, "902" should read "092".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Compliance With Federal Requirements for Reporting Releases and Transporting Hazardous Materials; Joint Workshop With the Enviromental Protection Agency

Correction

In notice document 89-18991 beginning on page 33317 in the issue of Monday, August 14, 1989, make the following correction:

On page 33317, in the second column, under "**DATE**", in the second line, "October 24" should read "October 25".

BILLING CODE 1505-01-D

DEPARTMENT OF TREASURY

Office of the Assistant Secretary (Enforcement)

31 CFR Part 103

Proposed Amendment to the Bank Secrecy Act Regulations Relating to Identification Required to Purchase Bank Checks and Drafts, Cashier's Checks, Money Orders and Traveler's Checks

Correction

In proposed rule document 89-19701 beginning on page 34791 in the issue of Tuesday, August 22, 1989, make the following corrections:

1. On page 34791, in the second column, in the **AGENCY** line, "Department" should read "Departmental".

2. On the same page, in the same column, under **FOR FURTHER INFORMATION CONTACT**, in the first line, "Advisory" should read "Advisor".

3. On page 34792, in the 1st column, in the 9th complete paragraph, in the 13th line, "of" should read "a".

4. On page 34793, in the 2nd column, in the 3rd complete paragraph, in the 16th line, "that proposed" should read "that the proposed".

5. On page 34794, in the 1st column, in the 1st complete paragraph, in the 9th line, "care" should read "card"; in the 17th line, "filed" should read "files"; and in the 30th line, after "financial" add "institution's records or files. Treasury strongly".

6. On the same page, in the second column, in the first complete paragraph, in the fifth line, after "require" add "that of a nonaccountholder purchases one or more of these".

7. On the same page, in the 3rd column, in the 2nd complete paragraph, in the 24th line, "laundering" should read "launderer".

BILLING CODE 1505-01-D

federal register

Tuesday
August 29, 1989

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 56 et al.

Air Quality, Chemical Substances, and Respiratory Protection Standards; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 58, 70, 71, 72, 75 and 90

RIN 1219-AA48

Air Quality, Chemical Substances, and Respiratory Protection Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Mine Safety and Health Administration's existing standards for air quality and chemical substances at coal and metal/nonmetal mines. It contains permissible exposure limits for substances that may pose health hazards at these mines. In addition, the proposed rule contains revised requirements for exposure monitoring, carcinogens, and respiratory protection programs. These actions are part of the Agency's ongoing review of metal/nonmetal and coal mine safety and health standards to improve protection for miners.

DATES: Comments must be received on or before November 27, 1989.

ADDRESSES: Send comments to the Office of Standards, Regulations, and Variances; MSHA; Room 631; Ballston Tower #3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey; Director, Office of Standards, Regulations, and Variances; MSHA; (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposed rule contains information collection requirements in §§ 58/72.200, 58/72.401, 58/72.402, 58/72.403, 58/72.404, 58/72.405, 58/72.450, 58/72.500 and 58/72.550. These paperwork requirements have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on the proposed paperwork provisions should be sent directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for MSHA (see address at the end of this discussion). The respondents in each of the paperwork provisions would be mine operators. Each of the following public burden hour estimates include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection information. In each instance, the resultant information collection would be used by MSHA to assess compliance with the proposed requirements.

Exposure monitoring records (§§ 58/72.200). These records are necessary for the mine operator to assess exposure trends, whether the limitations of respirators in use are being exceeded, and whether newly installed or modified controls have reduced exposures to the permissible limits. Recording and reviewing the data would alert operators and MSHA to exposure problems. The record could also satisfy the proposed notification of overexposure requirement. The public reporting burden for this collection of information is estimated to average 8 hours and 10 minutes per response.

Carcinogens (§§ 58/72.401, 58/72.402, 58/72.403, 58/72.404, 58/72.405, 58/72.450). Written procedures for working with class 1 carcinogens would allow the mine operator flexibility to address site-specific applications while ensuring that miners would have virtually no contact with the chemicals. Written decontamination, disposal and emergency procedures for class 2, 3 and 4 carcinogens and asbestos construction work are necessary so that miners can properly follow the procedures, and it can be ascertained that the procedures have been followed. A written medical surveillance program for specific carcinogens would ensure that proper medical evaluations are conducted. The written evaluations are needed to ensure that each miner assigned to a carcinogen area or exposed to a carcinogen as a result of an accident correctly follows any medical limitation determined by the medical examination. These records also help determine whether the miner has suffered a health impairment as a result of occupational exposure to a carcinogen. The written notice of transfer is necessary to ensure that the miner is adequately informed of the need for transfer. The public reporting burden for class 1 carcinogen procedures is estimated to average 40 hours per response. Written procedures for class 2, 3 and 4 carcinogens and asbestos construction work are estimated to take 4 hours per response. The written medical surveillance program is estimated to take 4 hours per response. Records of medical evaluations are estimated to average 1 hour and 30 minutes per response. Notices of transfer are estimated to average 10 minutes per response.

Respiratory protection program records (§§ 58/72.500 and 58/72.550). The mine operator would use the information to provide respiratory protection to miners when feasible engineering and administrative controls do not reduce exposures to permissible limits. Written operating procedures would ensure that miners are provided with proper equipment and follow appropriate use procedures. MSHA would use the information to determine compliance with the standard. Fit-test records are used to ensure that a respirator worn by an individual is properly fitted. Monthly inspections of emergency-use respirators are critical to ensure protection in the event of an emergency. A record of the latest inspection would enable the operator to determine the status of the equipment and when it would need to be inspected again. A written medical surveillance program would ensure that the proper medical evaluations are conducted. Records of the medical evaluations enable the operator to determine the specific medical or physical conditions that may limit respirator use by an individual. The written notice of transfer is necessary to ensure that the miner is adequately informed of the need for transfer. The public reporting burden for the standard operating procedures and medical surveillance program is estimated to average 8 hours per response. Monthly inspections and records of emergency-use respirators are estimated to average 2 minutes per response. Fit-test records are estimated to average 15 minutes per response. Records of medical evaluations are estimated to average 1 hour and 30 minutes per response. Notices of transfer are estimated to average 10 minutes per response.

Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to Patricia W. Silvey; Director, Office of Standards, Regulations, and Variances; MSHA; Room 631; Ballston Tower #3; 4015 Wilson Boulevard; Arlington, Virginia 22203 and to the Office of Information and Regulatory Affairs, Attention: Diana Rowen; Desk Officer for MSHA; Room 3001; Office of Management and Budget, Washington, DC 20503.

II. Rulemaking History and Organization of Standards

This proposed rule is part of MSHA's ongoing review of its coal and metal/nonmetal safety and health standards. On July 6, 1983 (48 FR 31171), MSHA published a notice in the **Federal Register** inviting public comment on a preproposal draft of revisions to air quality standards for metal/nonmetal mines. On November 19, 1985 (50 FR 47702), MSHA announced the

availability of a preproposal draft of revisions to the Agency's underground coal mine ventilation standards, including a revision of existing § 75.301–2, which addresses harmful quantities of noxious or poisonous gases. On January 27, 1988 (53 FR 2382), MSHA published the ventilation standards as a proposed rule. In that proposal, however, the Agency stated its intent to address exposure to harmful, noxious or poisonous gases separately rather than as part of the ventilation standards. MSHA did not publish a preproposal draft regarding similar air quality standards for surface coal mines and surface areas of underground coal mines. The preproposal drafts received numerous comments which are reflected in this proposal from mine operators, trade associations, labor groups, equipment manufacturers, and other interested parties.

This rulemaking would codify health standards for air quality, chemical substances, and respiratory protection in a new part 58 for metal/nonmetal mines and a new part 72 for coal mines. In the following discussion, the designation "58/72" indicates that a standard appears in both parts 58 and 72. The existing respirable coal mine dust standards in parts 70, 71, and 90 are unaffected by this proposed rule.

III. Nature of the Hazard

During the extraction and processing of ore, coal, and rock at mines, miners are exposed to many different hazardous substances. These substances may be inherent in the ore itself; additives used during milling or processing; chemicals used in cleaning, maintenance of equipment, or laboratory testing. The effect of these substances may range from allergic reactions to systemic toxicity. Some of them are capable of causing cancers, central and peripheral neuropathies, lung disease, liver and kidney damage, birth defects, and other systemic effects. In some instances, exposure to more than one substance may result in greater damage from a combined effect than from exposure to the individual substances. Some cause sensory irritation, which causes rhinitis, cough, sputum production, chest pain, wheezing and dyspnea. MSHA has identified all these health effects as causing a material impairment of health or functional capacity. The Agency believes that the health evidence forms a reasonable basis for proposing revisions to these levels. However, MSHA requests comment on this interpretation of material impairment of health or functional capacity.

In the final rule, MSHA will take all reasonable steps to establish exposure limits to hazardous chemicals to the extent necessary to protect miners from a material impairment of health or functional capacity. The Agency will take into account the probability and severity of harm; the likely benefits to miners; the strengths and weaknesses of the data; the economic impact, including feasibility, of reducing exposures; and the uncertainties of the assumptions used in each case. When appropriate, MSHA will quantify risks to miners in order to establish an exposure level that eliminates unacceptable risks. When quantification is not done, MSHA will assess the data in each case to reach a reasonable determination.

Hazardous substances may enter the body through the skin, the lungs, or the gastrointestinal tract. Some substances can be absorbed through the skin and cause systemic poisoning. Breathing hazardous substances can irritate or damage the upper respiratory tract and the lungs, or also lead to systemic poisoning. Ingestion of toxic materials can result in absorption of the materials in the digestive system and distribution throughout the body in the bloodstream. Contact with certain substances virtually through any route may cause cancer.

To prevent occupational illness and disease, health hazards must be recognized, evaluated, and controlled. This proposed rule would establish lists of hazardous substances that may adversely affect health and would require control of exposure to such substances. Where appropriate, MSHA would establish permissible exposure limits and delineate the methods and frequency of monitoring to evaluate exposure. The proposed rule would also revise requirements for respiratory protection programs for metal/nonmetal mines and establish similar requirements for coal mines. Compliance with these proposed standards would reduce occupational illness and disease among miners, potentially resulting in increased productivity and reduced medical and disability costs.

IV. Discussion of Proposed Rule

Sections 58/72.2 Definitions

The health standards would be preceded by a set of definitions that would apply specifically to them. The proposed defined terms are "access," "confined space," "designated representative," "permissible exposure limit" (PEL), "qualitative fit test," "quantitative fit test," "respirable dust," and "respirator protection factor." A PEL may be a "time-weighted average" (TWA), a "short-term exposure limit" (STEL), a "ceiling exposure limit" (C), or a "mixed exposure limit" (MEL). The "time-weighted average" is the average concentration of a substance that may not be exceeded over the course of a workday. The TWA for an 8-hour workday is listed in the table of permissible exposure limits. If the workday is longer than 8 hours, the TWA is adjusted by the length of the shift. The calculated average concentration of the airborne substance for the worker's shift would determine whether the permissible exposure limit has been exceeded. A time-weighted average allows exposures above the listed concentration, provided they are offset by exposures below the listed concentration during the workday. Some substances with a workday TWA may also have a 15-minute "short-term exposure limit." A STEL is the maximum time-weighted concentration to which workers can be exposed for a continuous period of up to 15 minutes. Other substances are so hazardous that they require a ceiling limit that must not be exceeded at any time, even for an instant. When airborne substances exhibit additive or synergistic effects on health, a mixed exposure limit is used to prevent potentially harmful effects. These concepts are addressed more fully below in the discussion of §§ 58/72.100, "Control of exposure to airborne substances."

In response to commenters, a definition for "confined space" would be added. The definition characterizes a confined space as an area that, by design, has restricted openings for entry and exit; is not intended for continuous occupancy; and has an atmosphere that could contain or produce dangerous air contaminants. Examples of confined spaces include storage tanks or processing vats that may be entered for cleaning or other maintenance. Hazardous gases and vapors as well as oxygen deficiency are among the hazards of confined spaces. The restricted area of confined spaces makes these hazards particularly acute should rescue measures be necessary.

The terms "qualitative fit test," "quantitative fit test," and "respirator protection factor" concern proper selection of respiratory protection and are discussed below in conjunction with §§ 58/72.500, "Respiratory protection program."

"Access" and "designated representative" define terms relating to miners' rights of access to their own exposure records.

Sections 58/72.100 Control of Exposure to Airborne Substances

This proposed standard would address the hazards of exposure to potentially harmful substances generated by mining activity or used in the mining or milling process. MSHA would eliminate outdated incorporations by reference in the existing standards and establish the permissible exposure limits. In addition, the Agency would require the use of feasible engineering or administrative controls to reduce exposure to permissible levels, except under specific circumstances where respiratory protection could be used.

Section 101(a)(6)(A) of the Federal Mine Safety and Health Act of 1977 (Mine Act) states that MSHA's promulgation of health standards must:

> * * * [A]dequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

The Legislative history of the Mine Act states that:

> * * * [T]he Secretary's authority under this section includes not only the promulgation of standards covering individual substances, but also standards covering classes or groups of substances. The [Senate Committee on Human Resources] believes that ('generic') standards of this kind may often provide more effective protection to miners. In addition, the Committee believes that the overriding consideration in setting health standards dealing with toxic substances and harmful physical agents must be the protection of the health of miners." S. Rep. No. 95-181, 95th Cong., 1st Sess. 21 (1977).

At this point in the rulemaking process, MSHA believes that the exposure limits adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its 1989-90 Threshold Limit Values (TLVs®) constitute a reasonable basis for this proposal in light of the statutory requirements. In addition to listing exposure limits for chemicals, mineral dusts, and carcinogens, the "TLV® Booklet" includes an explanation of how TLVs® are to be interpreted and applied. For example, the "TLV® Booklet" discusses time-weighted average limits, short-term limits, ceiling limits, excursion factors, "skin" notations, mixtures, nuisance particulates, simple asphyxiants, and carcinogens. Furthermore, the ACGIH list deals with a great many substances and families of substances in a generic approach consistent with the Agency's statutory mandate to provide the most effective protection to miners.

ACGIH is a widely recognized and respected non-governmental organization of industrial hygiene personnel from governmental and educational institutions. Since ACGIH was founded in 1938, it has concentrated on the technical aspects of worker protection. Each year ACGIH revises and updates its list of threshold limit values (TLVs®) for chemical substances. The ACGIH TLV® list is the largest list available of chemicals with recommended occupational exposure limits. When ACGIH proposes that a substance be added or deleted, or that its value be lowered or raised, the substance is placed for 2 years in the "Notice of Intended Changes" section of the "TLV® Booklet." The ACGIH membership and the public then have an opportunity to comment or offer evidence concerning the appropriate exposure level of the substance during those 2 years. All data received are then considered prior to the adoption of the TLV®. The evidence to support proposed levels is based on work site experience and data collected from human and animal studies.

The ACGIH "Documentation of the Threshold Limit Values" ("TLV® Documentation") contains a brief summary of supporting data for the substances and limits listed. It includes, among other things, the chemical formula for each substance, its threshold limit values (TLVs®), a description of the characteristics of the substance, and a bibliography of the literature that was used to set each TLV®. MSHA preliminarily believes that these efforts by ACGIH are consistent with the Agency's philosophy to use the best available scientific data for the development of appropriate exposure limits. For many years, Federal and state agencies, as well as other countries, have relied upon ACGIH limits as guides for regulatory limits governing worker health.

Indeed, MSHA's existing standards incorporate exposure limits from earlier ACGIH publications. Existing metal/nonmetal §§ 56/57.5001 incorporates by reference pages 1 through 54 of the 1973 edition of ACGIH's publication entitled "TLVs® Threshold Limit Values for Chemical Substances in Workroom Air Adopted by ACGIH for 1973" ("TLV® Booklet"). Existing coal § 75.301-2 establishes the "current" ACGIH TLVs® as the standard for noxious and harmful gas concentrations at underground coal mining operations, while § 71.700 references the 1972 ACGIH TLVs® as the standards for surface coal mines and surface work areas of underground coal mines.

Most of the permissible exposure limits in this proposal are based upon the 1989-90 ACGIH "TLV® Booklet." However, MSHA raises for comment other limits based upon the Occupational Safety and Health Administration's (OSHA) January 19, 1989, rulemaking updating its permissible exposure limits for general industry (54 FR 2332). In addition, the Agency raises for comment Recommended Exposure Limits (RELs) developed by the National Institute for Occupational Safety and Health (NIOSH).

OSHA relied heavily upon the already published and widely accepted ACGIH TLVs® and NIOSH RELs in selecting the PELs for its final rule. NIOSH recommended exposure limits are from criteria documents issued for general industry and not for mining. However, MSHA is soliciting comments on the appropriateness of these NIOSH RELs for mining. For those substances, as well as substances where MSHA's proposed PELs differ from those published by OSHA, MSHA is interested in toxicity data, including, where possible, a discussion of the health risks to miners, and feasibility and cost of compliance information. The following table lists differences between the OSHA PELs and this proposal. A "C" notation in the table indicates a ceiling limit.

TABLE 1—PERMISSIBLE EXPOSURE LIMITS DIFFERENCES

Substance	TWA		STEL	
	ppm	mg/m³	ppm	mg/m³
Common gases:				
Ammonia	25	18	35	27
OSHA	None	None	35	27
Carbon dioxide	5,000	9,000	30,000	54,000
OSHA	10,000	18,000	30,000	54,000

TABLE 1—PERMISSIBLE EXPOSURE LIMITS DIFFERENCES—Continued

Substance	TWA		STEL	
	ppm	mg/m³	ppm	mg/m³
Other substances:				
Acetic acid	10	25	15	37
OSHA	10	25	None	None
Acetonitrile—Skin notation				
OSHA—No skin notation				
Allyl glycidyl ether—Skin notation				
OSHA—No skin notation				
Aluminum:				
Metal		10		
OSHA		15 total dust		
OSHA		5 respirable dust		
Ammonium perfluorooctanoate		0.1		
OSHA—No PEL				
Ammonium sulfamate		10		
OSHA		10 total dust		
OSHA		5 respirable dust		
Anisidine (o-,p-isomers)—Skin notation	0.1	0.5		
OSHA—No skin notation	None	0.5		
Benomyl	0.8	10		
OSHA	None	10 total dust		
OSHA		5 respirable dust		
Beryllium and compounds		0.002		
OSHA		0.002 C 0.025	0.005 (30-min)	
Bismuth telluride (undoped)		10		
OSHA		15 total dust		
OSHA		5 respirable dust		
Borates, tetra, sodium salts all forms		5		
OSHA		10		
Boron oxide		10		
OSHA		10 total dust		
OSHA		5 respirable dust		
Cadmium and compounds—10 ug/m³ or 5 ug/m³:				
OSHA fume		0.1 C 0.3	Undergoing rulemaking by OSHA	
OSHA dust		0.2 C 0.6		
Captafol—Skin notation				
OSHA—No skin notation				
Carbon tetrachloride—Skin notation				
OSHA—No skin notation				
Catechol—No skin notation				
OSHA—No skin notation				
o-Chlorotoluene	50	250	75	375
OSHA	50	250	None	None
Chromium metal		0.5		
OSHA		1		
Clopidol		10		
OSHA		15 total dust		
OSHA		5 respirable dust		
Copper:				
Fume		0.2		
OSHA		0.1		
Cyanides, as CN—Skin notation				
OSHA—No skin notation				
DDT (Dichlorodiphenyl-trichloroethane)—No skin notation.				
OSHA—Skin notation				
Demeton—Skin	0.01	0.1		
OSHA	None	0.1		
2-N-Dibutylaminoethanol—Skin notation				
OSHA—No skin notation				
1,1-Dichloroethane	200	810	250	1,010
OSHA	100	400	None	None
Dichlorvos—Skin	0.1	1		
OSHA	None	1		
Diethylene triamine—Skin notation				
OSHA—No skin notation				
Dinitrobenzene (all isomers)—Skin	0.15	1		
OSHA—Skin	None	1		
Dipropylene glycol methyl ether—No skin notation				
OSHA—Skin notation				
Disulfoton—No Skin notation				
OSHA—Skin notation				
Epichlorohydrin—Skin	2	10		
OSHA—Skin	2	8		
Fluorine	1	2	2	4
OSHA	.1	.2	None	None

TABLE 1—PERMISSIBLE EXPOSURE LIMITS DIFFERENCES—Continued

Substance	TWA		STEL	
	ppm	mg/m³	ppm	mg/m³
Hexachlorobutadiene—Skin notation				
OSHA—No Skin notation				
Hexachloroethane—No skin notation				
OSHA—Skin notation				
Hydrogen cyanide—Skin	C 10	C 10		
OSHA—Skin			4.7	5
Hydrogen fluoride, as F	C 3	C 2.5		
OSHA	3		6	
Iron oxide fume (Fe_2O_3), as Fe		5		
OSHA		10 total particulate		
Isophorone	C 5	C 25		
OSHA	4	23		
Isophorone diisocyanate—Skin	0.005	0.045		
OSHA—Skin	0.005	0.02		
Magnesium oxide fume		10		
OSHA		10 total dust		
OSHA		5 respirable dust		
Malathion—Skin		10		
OSHA		10 total dust		
OSHA		5 respirable dust		
Mercury, as Hg Aryl and inorganic compounds		0.1		
OSHA		C 0.1		
Methoxychlor		10		
OSHA		10 total dust		
OSHA		5 respirable dust		
Methyl n-amyl ketone	50	235		
OSHA	100	465		
Methyl ethyl ketone peroxide	C 0.2	C 1.5		
OSHA	C 0.7	C 5		
Molybdenum, as Mo insoluble compounds		10		
OSHA		10 total dust		
OSHA		5 respirable dust		
Naled—Skin		3		
OSHA—No PEL				
Nitrapyrin		10		20
OSHA—No PEL				
p-Nitrochlorobenzene—Skin	0.1	.6		
OSHA	None	1		
Oil mist, mineral		5		10
OSHA		5		None
Ozone	C 0.1	C 0.2		
OSHA	0.1	0.2		
Phenyl ether vapor	1	7	2	14
OSHA	1	7	None	None
Phosphorus pentachloride	0.1	1		
OSHA	None	1		
Picloram		10		
OSHA		10 total dust		
OSHA		5 respirable dust		
Propane	Simple asphyxiant			
OSHA	1,000	1,800		
Propyl alcohol—Skin notation				
OSHA—No skin notation				
Rhodium:				
Metal		1		
OSHA metal fume		0.1		
Insoluble compounds, as Rh		1		
OSHA		0.1		
Soluble compounds, as Rh		0.01		
OSHA		0.001		
Selenium hexafluoride, as Se	0.05	0.2		
OSHA		0.4		
Silicon carbide		6		
OSHA		10 total dust		
OSHA		5 respirable dust		
Silver, soluble compounds, as Ag		0.01		
OSHA—No PEL				
Temephos		10		
OSHA		10 total dust		
OSHA		5 respirable dust		
TEPP—Skin	0.004	0.05		
OSHA	None	0.05		
Tetrachloronaphthalene—No skin notation				
OSHA—Skin notation				
Tetryl—No skin notation		1.5		
OSHA—Skin notation		0.1		
Thiram		1		
OSHA		5		

TABLE 1—PERMISSIBLE EXPOSURE LIMITS DIFFERENCES—Continued

Substance	TWA		STEL	
	ppm	mg/m³	ppm	mg/m³
Tin:				
Organic compounds, as Sn—Skin		0.1		0.2
OSHA		0.1		None
o-Toluidine—Skin	2	9		
OSHA	5	22		
Trichlorofluoromethane	C 1,000	C 5,600		
OSHA—No PEL				
Vinyl toluene	50	240	100	485
OSHA	100	480	100	485
Wood dust:				
Hard wood		1		
Soft wood		5		10
OSHA hard and soft wood		5		10
OSHA western red cedar		2.5		
Xylidine—Skin	0.5	2.5		
OSHA	2	10		

MSHA requests comments on the most appropriate PELs applicable to mining for these substances, particularly toxicity and feasibility information on both the OSHA and ACGIH limits. The Agency especially requests comments on silver, copper, and vanadium.

The metal/nonmetal preproposal draft also listed a number of new substances from the 1982 "TLV® Booklet" that are not in the existing standard. Some commenters objected and favored listing only substances found on mining property and which present a risk of a material impairment of health or functional capacity. This proposed rule includes those substances which the Agency has reason to believe, based upon the Agency's knowledge thus far, could pose this type of health risk to miners if found on mine property.

The metal/nonmetal preproposal draft also required, as the primary control, the use of feasible engineering or administrative controls to reduce exposure. Some commenters asked the Agency to define "feasible controls." The Mine Act requires the Secretary, when promulgating mandatory standards pertaining to toxic materials or harmful physical agents, base such standards upon:

* * * [R]esearch, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the miner, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the mandatory health or safety standard promulgated shall be expressed in terms of objective criteria and of the performance desired. [Section 101(a)(6)(A)].

Thus the Mine Act requires that the Secretary, in promulgating a standard, attain the highest degree of health and safety protection for the miner, with feasibility as a consideration.

In relation to feasibility, the legislative history of the Mine Act states that:

* * * This section further provides that "other considerations" in the setting of health standards are "the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws." While feasibility of the standard may be taken into consideration with respect to engineering controls, this factor should have a substantially less significant role. Thus, the Secretary may appropriately consider the state of the engineering art in industry at the time the standard is promulgated. However, as the circuit courts of appeals have recognized, occupational safety and health statutes should be viewed as 'technology-forcing' legislation, and a proposed health standard should not be rejected as infeasible when the necessary technology looms on today's horizon.' [*AFL–CIO* v. *Brennan*, 530 F.2d 109); [CA 3 1975) *Society of Plastics Industry* v. *OSHA*, 509 F.2d 1301 [CA 2), *cert. denied*, 427 U.S. 992 (1975).

Similarly, information on the economic impact of a health standard which is provided to the Secretary of Labor at a hearing or during the public comment period, may be given weight by the Secretary. In adopting the language of [this section], the Committee wishes to emphasize that it rejects the view that cost benefit ratios alone may be the basis for depriving miners of the health protection which the law was intended to insure. S. Rep. No. 95–181, 95th Cong., 1st Sess. 21 (1977).

Though the Mine Act and its Legislative History are not specific in defining feasibility, the courts have clarified the meaning of feasibility. The Supreme Court, in *American Textile Manufacturers' Institute* v. *Donovan* (OSHA Cotton Dust), 452 U.S. 490, 508–509 (1981), defines the word "feasible" as "capable of being done, executed, or effected."

Though the leading MSHA cases on feasibility are in the noise area, the Federal Mine Safety and Health Review Commission (Commission) gives a general definition of feasibility. Citing the OSHA *Cotton Dust* decision, the Commission concluded that a determination of the feasibility of engineering controls must include consideration of technological and economic factors. The existence of general technical knowledge relating to materials or methods which may be available or adaptable to a specific situation establishes technological feasibility. A control may be technologically feasible when "if through reasonable application of existing products, devices or work methods with human skills and abilities, a workable engineering control can be applied" to the source of the hazard. It need not be an "off-the-shelf" product, but "it must have a realistic basis in present capabilities" [*Secretary of Labor* v. *Callanan Industries, Inc.* (Noise), 5 FMSHRC 1900 (1983)]. Industry must have at least conceived some industrial strategies or devices that are likely to be capable of meeting the permissible exposure limits, and the affected industries must be generally capable of adopting these measures. [*United Steelworkers of America, AFL–CIO–CLC* v. *Marshall* (OSHA Lead), 647 F.2d 1189 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 918 (1981)].

In a separate but consistent noise decision, the Commission ruled that an engineering control may also be feasible even though it fails to reduce exposure to permissible levels contained in the standard, as long as there is a signficant reduction in exposure. (*Todilto Exploration and Development Corporation* v. *Secretary of Labor*, 5 FMSHRC 1894 (1983)).

Consistent with case law, MSHA would consider three factors in determining whether engineering controls are feasible at a particular mine: first, the nature and extent of the overexposure; second, the demonstrated effectiveness of available technology; and third, whether the committed resources are wholly out of proportion to the expected results. Under the proposed rule, before a violation of the standard could be found, MSHA would have to determine that a worker has been overexposed; that administrative or engineering controls are feasible; and that the operator failed to install or maintain such controls. If these conditions are met, the operator would be issued a citation with an appropriate abatement date for installing feasible controls. A respiratory protection program would be required while controls are being installed. As long as worker exposure is reduced to or below the PEL, the mine operator has flexibility under the proposed rule to choose the engineering or administrative controls that best suit the mine's situation. If an operator needs assistance in selecting a control method, MSHA would make recommendations on how to reduce exposure, based upon demonstrated experience.

MSHA has considered the substances on the 1989–90 ACGIH "TLV® Booklet" to determine whether it would be appropriate to regulate them at mines. Although the majority of substances in the "TLV® Booklet" do not naturally occur in mining, they may be brought on mine property in the course of day-to-day operations. For this reason, MSHA is proposing to include most of the TLV® list in a table of permissible exposure limits (PEL Table). The Agency believes that the risks to miners posed by these substances results from the frequency or nature of their use, or the nature of their effects on the body. The list is also referenced by §§ 58/72.200, "Exposure monitoring." Other commenters suggested separate TLV® lists for each type of mining operation. However, given the diversity of the coal and metal/nonmetal mining industry, such an approach would be impractical. The Agency is in the process of gathering evidence for a generic final rule for improved health protection for miners. However, MSHA also solicits comments on substances that are not on the proposed list but may be found on mine property and may pose a hazard of material impairment of health or functional capacity.

Simple asphyxiants are listed in the PEL Table as they are identified in the 1989–90 "ACGIH TLV® Booklet." Because they pose a health hazard by displacing oxygen rather than by a toxic nature, the PEL Table references these substances to §§ 58/72.300 which specify the minimum allowable oxygen content in work area.

The PEL Table also lists those substances that are carcinogens on the basis of human and/or animal data. In addition to listing any applicable TLVs® for these substances, the table also references the specific precautions required by the carcinogen standards in Subpart C to alert mine operators that there are additional requirements for such substances because of their carcinogenic nature.

NIOSH maintains a "Registry of Toxic Effects of Chemical Substances" (RTECS). The purpose of the Registry is to provide basic information on the known toxic and biological effects of chemical substances to employees, employers, industrial hygienists, physicians, and anyone else with the need to know in order to assure proper and safe handling of chemicals. The Registry contains basic toxicity information and other data, such as synonyms, trade names, and Chemical Abstracts Service Registry (CAS) numbers. Each chemical in the Registry is assigned a unique identifier. MSHA has included the NIOSH RTECS numbers in its proposed permissible exposure limit tables as a reference aide for the mining community.

At the end of the preamble is a listing of the differences between the proposed rule and the existing rules. The tables include: (1) Substances that would be regulated for the first time by MSHA; (2) Changes and reductions of exposure limits for substances currently regulated by MSHA; (3) Changes and additions concerning short-term exposure limits; (4) Chemicals that would have a new skin notation; (5) Chemicals that would be deleted from existing regulations; (6) Skin notations that would be deleted from existing regulations; (7) Existing names that have been changed to new names in the proposed list; and (8) Substances that would be regulated as carcinogens for the first time. The following table summarizes these proposed changes:

TABLE 2.—SUMMARY OF PROPOSED CHANGES

Proposed change	Number of substances affected		
	Metal/nonmetal alone	Metal/nonmetal and coal	Coal alone
First time regulated	146	6	13
Changes in exposure limits to substances already regulated	138	7	7
Changes of STELs	223	.....	.....
New skin notation	33	.....	.....
Deletion of substances	19	.....	.....
Deletion of skin notation	18	.....	.....
New carcinogens	40	6	6

Time-Weighted Average (TWA)

The use of a time-weighted average (TWA) allows for excursions above the TWA limit, provided they are compensated by equivalent excursions below the TWA limit during the workday. The essential factor is that the TWA cannot be exceeded when exposures are averaged for the workday.

The TLVs® were developed for an 8-hour day and 40-hour workweek. Therefore, for 8-hour workdays or shorter, the formula given in §§ 58/72.100(a) is used. For workshifts longer than 8 hours, the TWA is adjusted downward proportionally to the hours worked as given in §§ 58/72.100(b). This adjusts the dose received by a miner to the same amount that would have been received in 8 hours at the TWA listed in the exposure limit tables.

It is critical in controlling exposure that a miner's entire workshift be sampled and controlled. In mining, workshifts greater than 8 hours are common. The shifts can range from 9-hour days up to dawn-to-dusk shifts in seasonal operations. If MSHA were to require that the TWA be applied only to 8-hour exposures, miners could be exposed for substantial periods of time to uncontrolled amounts of airborne contaminants.

The method proposed in §§ 58/72.100(b) is simple. The mine operator can easily calculate the TWA that applies to the length of the miner's workshift. With the use of this formula, the miner would only receive the same total dose that the miner would have received during a traditional 8-hour workday.

MSHA is aware that it does not directly address the complicated issues of biological half-life, clearance mechanisms, and recovery time. However, MSHA believes that the

method's simplicity and ease of use are important advantages. Upon review of the scientific literature, MSHA could not find any single adjustment method that was widely accepted. Some methods were so complicated that even professional industrial hygienists might have difficulty applying them. At this time, MSHA believes that this method, which relates the dose received by the miner to the amount allowed in an 8-hour workshift, inherently addresses such concerns as recovery time and clearance because of the lowered TWA. MSHA specifically requests comments on this method and its applicability to different chemicals, as well as the requirement for full-shift sampling. MSHA is also seeking comments on what action is appropriate for calculating exposures when miners work overtime, such as working two consecutive shifts or when more than 40 hours are worked in a 7-day period.

Ceiling Limits and Short-Term Exposure Limits (STELs)

While a time-weighted average is an adequate limit for most substances, there are certain chemical substances that are fast acting or highly irritating and have permissible exposure limits based upon such responses. Acute poisoning is one physiological hazard that could require setting a concentration limit not to be exceeded at any time—a ceiling limit. Ceiling limits are designated by a "C" in the PEL Table.

Under the proposed rule, any instantaneous or other applicable short-term sampling that indicates a concentration above the ceiling limit would constitute an overexposure. The concept of ceiling limits is currently incorporated by reference from the 1972 and 1973 "TLV® Booklets." Commenters suggested a reevaluation of the ceiling limit concept and reassignment of a value more closely associated with the NIOSH/OSHA immediately dangerous to life or health (IDLH) limit. However, the purpose of the ceiling limit is to provide protection from more serious health effects that could occur at levels far below those immediately dangerous to life or health.

The existing standard incorporates the ACGIH concept of excursion factors for all substances not having a ceiling value. These factors are used as multipliers of the TLV® to determine the maximum concentration to which a person may be exposed at any one point in time, within the range of limits of the TLV® and providing the time-weighted average does not exceed the TLV®. In 1973, ACGIH applied excursion factors to all substances, unless a short-term limit is specified by the Commonwealth of Pennsylvania Department of Health in its 1968 "Regulations Establishing Threshold Limit Values in Places of Employment" (Pennsylvania Rules and Regulations, Chapter Four, Article 432) or the American National Standards Institute (ANSI) document "Acceptable Concentrations." Some substances had both Pennsylvania and ANSI limits. In such cases, MSHA has enforced the more restrictive limit. The Agency is proposing to replace the concept of excursions with the concept of short-term exposure limits currently used by ACGIH.

Short-term exposure limits are assigned to certain substances that do not have a ceiling limit but whose short-term toxicological effects necessitate some limitation on excursions above the TWA. MSHA is proposing the concept set forth in the metal/nonmetal preproposal draft. A short-term exposure limit would be a limit that any 15-minute time-weighted average exposure could not exceed during the workday, even if the time-weighted average for the workday were within the time-weighted limit.

The ACGIH concept of STEL in the 1989–90 "TLV® Booklet" recommends that no more than four exposures at the STEL per day be permitted, with at least 60 minutes between each exposure period. The Agency is not proposing this aspect of the STEL concept because it is unlikely that exposures would equate precisely to the STEL without some risk of exceeding the STEL. Under the proposed rule, for purposes of determining whether a substance's STEL has been exceeded, any 15-minute time-weighted average would be compared to the STEL.

STELs are based upon toxicological data that indicate the levels at which workers can be exposed continuously for a short period of time without suffering irritation, chronic or irreversible tissue change, or narcosis (drowsiness) to the extent that accident proneness increases or ability for self-rescue is impaired. STELs have been determined primarily by effects associated with short-term exposures to either humans or animals.

Existing §§ 56/57.5001(c) require that miners be withdrawn from a metal or nonmetal mine where there is an overexposure to an airborne contaminant given a "C" (ceiling) designation. Under the proposed rule, mine operators would be required to take immediate corrective action if exposures exceed the ceiling or short-term exposure limits established by §§ 58/72.100(b). MSHA does not believe that this proposal would result in a reduction of protection afforded miners by the existing standard because operators would be required to reduce concentrations immediately to below the PEL in accordance with proposed §§ 58/72/100(e). If the corrective action would take even a short time, only persons provided with appropriate respiratory protection would be allowed to remain in the area. The required respiratory protection is addressed in proposed §§ 58/72.500. All other persons would have to be withdrawn from the area. The withdrawal requirement would also prompt the operator to practice accident preparedness and prevention.

Some Specific Substances

Asbestos. Regulations for asbestos exposure are included in this proposed rule. MSHA has reviewed the ACGIH TLVs® for the various forms of asbestos as well as OSHA's limit for asbestos and the nonasbestiforms of actinolite, tremolite, and anthophylite. Consistent with OSHA's asbestos standard, MSHA is proposing an exposure limit of 0.2 f/cc, utilizing MSHA's current method of identifying asbestos. However, based on the Agency's experience in mining, the asbestos proposal does not include the non-asbestiforms of actinolite, tremolite, and anthophyllite. These three minerals are not regulated currently by MSHA but would be covered under the proposed respirable mine dust standard. However, since they are regulated under the OSHA asbestos standard, the Agency requests submission of relevant data concerning what, if any, health risk they may pose in mining. Recently OSHA promulgated a STEL of 1 f/cc, and MSHA is requesting comment for its applicability to mining.

The Agency proposes to retain the criteria currently codified in §§ 56/57.5001(b) that fibers are to be greater than 5 microns in length as determined by membrane filter methods at 400–450 magnification (4 millimeters objective) phase contrast illumination. MSHA believes that this provides sufficient information to the mine operator while not inhibiting future sampling and analytical development. MSHA specifically requests comments on the appropriate methods of defining fibers and determining fiber concentration.

Asbestos mining and milling and vermiculite mining and milling where asbestos exceeds .1 percent in the ore or concentrate would also be covered by the requirements for class 4 carcinogens. Asbestos construction work would also have additional requirements. These

requirements are discussed below in §§ 58/72.405.

Barite. The metal/nonmetal preproposal draft specified a limit for barite, a barium sulfate compound, of 0.5 mg/m^3, the same limit placed on other barium compounds. The ACGIH had established this limit primarily based on the toxicological data associated with the more soluble forms of barium, such as barium choloride and barium nitrate. In the 1989–90 "TLV® Booklet," ACGIH has taken into account the insolubility of barium sulfate and assigned a TLV® of 10 mg/m^3. MSHA is proposing this limit.

Benzene. MSHA is proposing the OSHA limit of a TWA of 1 ppm and a STEL of 5 ppm instead of the ACGIH recommended TWA of 10 ppm. MSHA believes that health data support the OSHA limit. This substance also would be regulated further under the proposed carcinogen standards, §§ 58/72.403.

Borates. MSHA's metal/nonmetal preproposal draft standard recommended permissible exposure limits for sodium tetraborate salts from the ACGIH 1982 TLV® Booklet (1 mg/m^3 for anhydrous and pentahydrate salts and 5 mg/m^3 for decahydrate salts). Prior to July 1982, these substances were regulated as unlisted nuisance dusts with a TLV® of 10 mg/m^3 (total dust). Subsequently, MSHA revised its nuisance dust policy, and these substances are not regulated currently.

In the 1989–90 "TLV® Booklet," borate salts are categorized in three forms: anhydrous, pentahydrate, and decahydrate. Each form is differentiated by the number of water molecules bound by the salt and has a specific exposure limit. Although each may be found in manufacturing processes, once exposed to changing atmospheric conditions, such as temperature or humidity, each substance may change to another hydrated form of the sodium tetraborate salt in question. The hygroscopic or water binding nature of the salts is variable. Therefore the borate salt that is present in an occupational environment and collected for analysis to compare to the appropriate standard may, during collection, storage, or analysis, change to one of the other hydrated types of borate salt.

MSHA does not know of a sampling and analytical technique that would distinguish the different exposure levels of the airborne borate salts in a mixed sample. Therefore the Agency proposes an inclusive sodium tetraborate salt PEL of 5 mg/m^3 (total dust), regardless of the state of hydration. MSHA requests information and analytical data for alternative PELs.

Cadmium and compounds. MSHA is proposing two alternative PELs for cadmium and its compounds: 10 $\mu g/m^3$ and 5 $\mu g/m^3$. The 10 $\mu\gamma/\mu^3$ limit is the ACGIH notice of intended changes for cadmium and compounds that is based on the prevention of both kidney effects and carcinogenic effects. MSHA is aware of data that have become available since ACGIH notice of intended changes that indicate that kidney lesions related to cadmium exposure are permanent and may be progressive. In view of this new information as well as the ongoing discussion in the scientific community concerning the carcinogenic risk from cadmium, MSHA is also considering whether a 5 $\mu g/m^3$ limit for cadmium and its compounds. MSHA solicits comment on the scientific data supporting either limit as well as information on the feasibility of achieving each limit.

Calcium oxide and calcium hydroxide. Some commenters stated that calcium oxide should be deleted from the PEL Table because they did not believe it to be a "toxic" substance. The existing standard for calcium oxide (CaO) is 5 mg/m^3 as listed in the 1973 "TLV® Booklet." Calcium oxide has been a part of the ACGIH TLV® listings since 1962, when the organization began its review of the substance's properties. From that time, ACGIH has continued to list calcium oxide with a limit of 5 mg/m^3. In 1976, ACGIH published its notice of intent to lower the TLV® of calcium oxide to 2 mg/m^3 and add calcium hydroxide (CaOH) to the list with a TLV® of 5 mg/m^3. This action was based upon the caustic properties exhibited by both substances and their associated irritant potential.

Calcium oxide is a hygroscopic compound that, when suspended in the atmosphere as dust, absorbs water to form calcium hydroxide. This occurs at different rates and affects different percentages of a calcium oxide dust cloud. MSHA is unaware of any sampling method that will selectively collect either calcium oxide or calcium hydroxide. In addition, MSHA is unaware of any sampling and storage method that will maintain the calcium oxide/calcium hydroxide ratio of a collected sample. MSHA solicits information on any analytical procedures that will differentiate between calcium oxide and calcium hydroxide. Therefore the Agency proposes a 5 mg/m^3 (total dust) limit for any combination of calcium oxide and calcium hydroxide, which would be applicable to both substances in order to address the hazard of their caustic properties. MSHA also requests information and analytical data for alternative PELs.

Carbon dioxide. The existing coal ventilation safety standard in § 75.301 requires that the air ventilating active workings in an underground coal mine must not contain more than 0.5 percent (5,000 ppm) carbon dioxide. The existing health standard for metal /nonmetal mines also sets a 5,000 ppm TWA for CO_2. MSHA is proposing the 1989–90 ACGIH values of 5000 ppm (time-weighted average) and 30,000 ppm (STEL) as the appropriate health limits to be applied to all mines. This would not affect the existing safety standard for underground coal mines. OSHA's recent PEL rulemaking set a general industry TWA of 10,000 and a STEL of 30,000. MSHA solicits comments on the appropriateness of the OSHA limit to mining.

Chromium (VI) compounds. MSHA's proposed PEL Table lists chromium (VI) compounds but does not subdivide them further as does ACGIH, because the exposure limits are the same for both "water-soluble" and "certain water insoluble" forms of chromium. In the proposed carcinogen standard §§ 58/72.403, MSHA includes those specific insoluble compounds of chromium (VI) for which there was separate TLV documentation of carcinogenicity (lead chromate and zinc chromate).

Coal exposures in metal/nonmetal mines. Two commenters recommended that the PEL for respirable coal dust containing less than 5 percent silica be deleted, stating that there are no coal dust exposures in metal and nonmetal mining. However, coal is used frequently as a fuel for firing kilns in the cement and perlite industries and at roasting operations such as nickel. As a result, exposure to coal dust occurs during car unloading, conveying and transferring, storage, and milling of the coal prior to use. MSHA would retain the current respirable coal dust PEL of 2 mg/m^3, if less than 5 percent quartz is present. For respirable dust fractions exceeding 5 percent quartz, MSHA proposes that the allowable concentration of respirable coal dust be calculated by dividing the percent of quartz into 10. This methodology is consistent with the respirable dust standards for coal mines in subpart B of 30 CFR parts 70 and 71, which remain unchanged.

Cotton dust and grain dust. MSHA intends to delete raw cotton dust from the current standard. Both raw cotton dust and grain dust (oat, wheat, and barley) are included in the 1989–90 ACGIH "TLV Booklet." However, because they relate specifically to industries other than mining, MSHA is

not including them in the proposed PEL list.

Ethylene glycol particulate. MSHA proposes to delete ethylene glycol particulate from the existing regulation, but ethylene glycol vapor would continue to be regulated. Ethylene glycol particulate would have been considered a nuisance particulate. The new mine dust standard of 5 mg/m³ respirable dust would replace the current limit of 10 mg/m³.

Ethylene glycol dinitrate and nitroglycerin. MSHA is proposing the new OSHA limits for ethylene glycol dinitrate (a 0.1 ppm STEL) and nitroglycerin (a 0.05 TWA and a 0.1 STEL). MSHA believes these limits are supported by data and address the type of exposure that occurs in mining. Individuals involved in blasting have short, intermittent contact with these chemicals throughout the shift.

Ethylene oxide. MSHA is proposing the OSHA limit of a TWA of 1 ppm and a STEL of 5 ppm. ACGIH recommends a TWA of 1 ppm, but no STEL. MSHA believes that health data support the OSHA limits. This substance also would be regulated further under the proposed carcinogen standards, §§ 58/72.403.

Graphite. MSHA is proposing a 2 mg/m³ respirable dust limit for all forms of graphite. ACGIH is proposing a 2 mg/m³ limit for all forms in its 1989–90 Notice of Intended Changes. NIOSH also recommends a 2 mg/m³ respirable dust limit. MSHA has conducted a study for conversion factors for graphite in mining. MSHA's data indicate that the existing limit of 15 mpccf is approximately equivalent to 1.9 mg/m³. MSHA believes that these data support a 2 mg/m³ limit.

Kaolin. Several commenters objected to the placement of kaolin on the list of mineral dusts which included, among other substances, asbestos and silica. Although they did not object to the assigned exposure limit, they viewed the placement as a change in classification from that of "nuisance dust" in the 1973 ACGIH "TLV® Booklet." The proposed rule would respond to this concern by treating kaolin as a respirable mine dust. Respirable mine dusts are discussed below.

Lead. The PEL for lead in the metal/nonmetal preproposal draft was based on OSHA's lead standard. Many commenters stated that this was inappropriate because the OSHA limit for lead related to the health effects of exposure to lead oxide (PbO), and miners are exposed to lead sulfide (PbS) (galena), which is less soluble and therefore less biologically available. At this point, MSHA has insufficient data on the potential hazards and health effects of the separate lead compounds and therefore proposes to adopt ACGIH's limit of 0.15 mg/m³ for inorganic lead compounds. The National Toxicology Program's Board of Scientific Counselors has recommended that lead oxide and lead sulfide be ranked a high priority for comparative acute toxicity studies. NIOSH nominated the chemicals in order to aid MSHA in developing standards. MSHA specifically solicits data and comments as to the appropriateness of regulating lead compounds (except lead sulfide) with a TWA of 50 μg/m³ limit, as OSHA currently does, and regulating lead sulfide with a TWA of 0.15 mg/m³.

Nitrogen dioxide. OSHA's recent rulemaking established a nitrogen dioxide (NO_2) PEL for general industry of 1 ppm as a 15-minute STEL based upon studies indicating an increased airway resistance cause by exposure to NO_2. NIOSH also has a REL of 1 ppm as a 15-minute STEL. ACGIH recommends a 3-ppm TWA and a 5-ppm STEL for NO_2. At both metal/nonmetal and coal mines, the current PEL for NO_2 is a TWA of 5 ppm. The Agency is continuing to review medical studies and other documentation to determine whether a PEL of 1 ppm as a 15-minute STEL or a 3-ppm TWA with a 5-ppm STEL would be appropriate for mining. MSHA has included both exposure limits for comment in this rulemaking. Comments should address the health basis for either limit and the feasibility and cost of meeting the limit in mining.

Phenyl-ether-diphenyl mixture. MSHA is deleting phenyl-ether-diphenyl mixture—TWA 1 ppm (7 mg/m³)—from the existing standard. ACGIH does not list this limit in the 1989–90 TLV Booklet. Phenyl ether vapor would have a TWA of 1 ppm (7 mg/m³) and biphenyl would have a TWA of 0.2 ppm. Exposure to a mixture of the compounds would be controlled by the additive formula which would result in a limit being equal to or less than the existing limit.

Polytetrafluoroethylene decomposition products. The proposal would delete polytetrafluoroethylene decomposition products from the regulations. ACGIH recommends sampling methods but lists no specific TLV®. ACGIH also states that the toxicity of these products remains to be determined but recommends that air concentrations be kept at minimal levels. Although operators are encouraged to follow ACGIH's recommended practice, MSHA does not believe that such recommendations provide sufficient information for the Agency to set an exposure limit.

Silica. The existing requirement for metal/nonmetal mines specifies that exposure to silica-containing respirable dust (quartz) must not exceed a TLV® calculated from the formula 10/(%SiO_2+2). The percentage of silica in the dust largely determines the amount of dust to which the miner can be exposed. The higher the silica content, the lower the amount of dust to which the miner can be exposed. The lower the silica content, the higher the permissible dust level.

Using the 1982 ACGIH "Notice of Intended Changes," MSHA's metal/nonmetal preproposal draft recommended a respirable quartz limit of 0.1 mg/m³, eliminating the formula and measuring only the quantity of silica present. Now that ACGIH has finalized its approach, which appears in the 1989–90 "TLV® Booklet," MSHA is proposing the same exposure limit. This represents no substantive change in the existing silica exposure limit. Currently, using the respirable quartz formula for metal/nonmetal mines, the calculated limit for dust containing 100 percent quartz is 0.098 mg/m³, which differs from the recommended limit of 0.1 mg/m³ only because of the additive constant of 2 in the formula's denominator. The proposed limit does not represent a reevaluation of the toxicity of quartz but would conform the silica PEL to the format used for all other hazardous dusts and simplify the calculation of the PEL of mixtures containing quartz, cristobalite, and tridymite. Simplifying the TLVs® for all forms of crystalline silica provides for more uniform application of the silica PEL. In the current TLV® calculation, the factor of 2 tends to be unnecessarily more stringent where lower percentages of silica are present.

Talc. The preproposal draft set a 2 mg/m³ respirable limit for talc containing no asbestos fibers. The Threshold Limit Value Discussion and Thirty-five Year Index with Recommendations (ACGIH, 1984) discusses the conversion from 15 million particles per cubic foot (mppcf), as collected by impinger, to the current TLV® of 2 milligrams per cubic meter (2 mg/m³), as collected by the gravimetric method. This was first proposed by ACGIH in 1981. The 1989–90 "TLV® Booklet" lists only the 2 mg/m³ respirable dust limit. Some commenters disagreed with this limit and questioned the conversion factor used by ACGIH. The majority of commenters felt that the ACGIH TLVs® should be adopted as the limits for exposure for miners because of their widespread acceptance in the mining community. MSHA agrees that the ACGIH TLV® for talc represents a technically sound integration of medical,

epidemiological, toxicological, and industrial hygiene data and experience. MSHA accepts the original data for the 15 mppcf limit for talc. However, MSHA has conducted its own study of conversion factors and believes that Agency data are a more accurate evaluation of the conversion of mppcf to mg/m^3 for talc in the mining environment.

In 1983, MSHA conducted a study to determine the specific conversion factors for several minerals. One such conversion factor was determined for nonasbestiform talc dust based upon comparison of gravimetric dust samples with impinger samples. A previous study supported a factor of 6 for converting respirable mass concentrations to equivalent number concentrations. The 1983 study confirmed the earlier result. Statistical analysis of the combined data from both studies showed that the relationship of 6 mppcf to 1 mg/m^3 for nonasbestiform talc does not change. Therefore MSHA is proposing a 2.5 mg/m^3 respirable dust limit for talc based on a conversion factor of 6 applied to 15 mppcf. Asbestos exposure for talc containing asbestos fibers would be regulated by the asbestos provisions of this proposal.

Vanadium. MSHA is proposing the NIOSH recommended limits for vanadium (1 mg/m^3) and vanadium compounds (0.05 mg/m^3). Exposure to vanadium in mining occurs from a wide variety of vanadium compounds. Vanadium trioxide exposure can occur in uranium/vanadium circuits and has resulted in worker complaints of illness. Vanadium exposure can also occur in welding and cutting operations. MSHA believes that the NIOSH limits address the various forms of vanadium found in mining better than the ACGIH limit for vanadium pentoxide (dust and fume). MSHA specifically solicits comments on the exposure limits for vanadium compounds.

Vinyl chloride. MSHA is proposing the OSHA limit of a TWA of 1 ppm and a STEL of 5 ppm instead of the ACGIH recommended TWA of 5 ppm. MSHA believes that health data support the OSHA limits. This substance also would be regulated further under the proposed carcinogen standards, §§ 58/72.402.

Mixed Exposure Limits (MELs)

Occupational exposures frequently involve simultaneous exposures to more than one contaminant. An individual may be exposed to multiple contaminants contained in a single product or process, or to multiple contaminants from different sources.

In the metal/nonmetal preproposal draft, MSHA proposed a "target organ" designation system to address adverse health effects which can occur when there is exposure to two or more substances that affect the same body organ. Categories were established, which were further defined by subclassifications detailing specific organ sites or physiological disorders. A mixed exposure limit (MEL) would have applied to those substances having common target-organ designations.

Commenters opposed the target-organ approach as presented in the metal/nonmetal preproposal draft, stating that the Agency had oversimplified a complex issue. MSHA agrees and has abandoned this approach in the proposed rule. EPA in its "Proposed Guidelines for the Health Risk Assessment of Chemical Mixtures" states that no single approach can be recommended to assess the risk of multiple chemical exposures, because there is no validated method in the scientific community for generalization of mixed exposures. The majority of commenters recommended that MSHA use the ACGIH's comprehensive approach to mixed exposures. MSHA agrees with these commenters and is proposing to continue to use the ACGIH concept of threshold limits for mixtures for substances that act upon the same organ system. This formula is the same formula that OSHA uses in 29 CFR 1910.1000.

Information on organ system effects is readily available to mine operators. For example, under OSHA's hazard communication standard, non-mining employers must have material safety data sheets (MSDSs) and container labels to alert employees to the health hazards of hazardous chemicals used in general industry. Both MSDSs and labels warn of target organ effects. These chemicals include all substances listed in the most current ACGIH "TLV® Booklet." Therefore hazardous chemicals entering mine property are accompanied by MSDSs and container labels from which the mine operator should be able to determine quickly and effectively whether a miner could be exposed to substances that act upon the same organ system. On March 30, 1988 (53 FR 10257), MSHA issued an advance notice of proposed rulemaking for a hazard communication standard for the mining industry. The Agency expects to publish a proposed hazard communication standard later this year.

For substances inherent in the ore, mine operators themselves have the greatest knowledge of hazardous substances. In order to be competitive, most operators voluntarily provide material safety data sheets with their products. These sheets allow their general industry customers to address any hazards in their own training programs under OSHA's hazard communication standard, as well as State or local community right-to-know laws. In addition, there are low-cost booklets, such as NIOSH's "Pocket Guide to Chemical Hazards," which list the target organs for specific chemicals. This booklet has been provided to each of MSHA's metal/nonmetal mine inspectors, who can aid the operator if specific questions arise. The booklet is also available at MSHA's coal mine district offices.

It should be noted that mine operators would not have to conduct independent literature searches to determine target organ effects but rather would be expected to use information that is readily available.

Skin Absorption

MSHA proposes to continue regulation of airborne substances with a "skin" notation by requiring use of personal protection to prevent absorption of the substances through the skin. In addition, MSHA is proposing to add the "skin" notation to 33 new chemicals. MSHA would also delete the skin notation from 18 chemicals from which ACGIH has deleted the skin notation.

As in the existing standard, the skin designation would follow the particular substance on the TLV® list. While most exposures are through the respiratory route, substances with a "skin" designation increase the body burden by exposure through the cutaneous route (skin, mucous membranes, and eyes), either through airborne contact or more frequently by direct contact with the liquid or solid form of the substance.

Additional care should be exercised when encountering substances with a skin notation at airborne levels near or above the permissible limits, especially when relying upon respiratory protection to control exposure. The rate of absorption is thought to be a function of the concentration to which the skin is exposed and the total area of exposed skin. Skin absorption is a particular concern at high airborne concentrations, especially if a significant area of skin is exposed for a long period of time. The proposal would require such skin exposures to be minimized by covering exposed skin with personal protection when airborne concentrations exceed permissible exposure limits. This may involve wearing proper clothing, work gloves, or eyewear, as needed. In addition, the proposal would require prevention of direct contact with nonairborne forms (liquids or solids) of

these substances. Direct contact while handling these substances often presents the greatest degree of risk. A spill on the skin could result in an absorbed dose that could negate the protection offered by controlling airborne exposures to the PEL. This requirement would necessitate use of additional personal protection, such as impermeable aprons or gloves.

Nuisance Particulates (Nuisance Dusts)

MSHA's existing metal/nonmetal nuisance particulate (nuisance dust) standards, §§ 56/57.5001, establish exposure limits for airborne contaminants through incorporation by reference of the 1973 ACGIH TLVs® on pages 34, 35 and appendix E on page 53. Nuisance dust is a term that describes particulates containing less than 1 percent quartz and no excessive concentrations of a more toxic material. Where a toxic material is determined to be present, based on laboratory analysis, MSHA enforces the limit listed for that toxic substance.

ACGIH characterizes nuisance particulates as dusts that do not produce significant organic diseases or toxic effects when exposures are kept under reasonable control. ACGIH contrasts nuisance dusts to fibrogenic dusts that can cause scar tissue to form in the lungs. Nuisance dusts are distinguished from fibrogenci dusts on the basis of the absence of toxic impurities, primarily quartz content of less than one percent.

The 1973 "TLV® Booklet" lists some specific examples of nuisance dusts and sets a threshold limit value for these substances of 10 mg/m³ total dust.

Alundum (Al_2O_3)
Calcium carbonate
Cellulose (paper fiber)
Portland Cement
Corundum (Al_2O_3)
Emery
Glass, fibrous or dust
Glycerin mist
Graphite (synthetic)
Gypsum
Kaolin
Limestone
Magnesite
Pentaerythritol
Plaster of Paris
Rouge
Silicon carbide
Starch
Sucrose
Tin oxide
Titanium dioxide
Vegetable oil mists (except castor, cashew nut, or similar irritant oils)

Prior to July 1982, MSHA also enforced the same limit for unlisted nuisance dusts at metal/nonmetal mines based on ACGIH recommendations. In July 1982, MSHA reviewed its enforcement policy for unlisted nuisance dusts. Because the standard did not explicitly identify unlisted substances, the Agency felt it may not have given adequate notice regarding its application to such substances. Therefore MSHA revised its enforcement policy to exclude unlisted substances from coverage.

In the metal/nonmetal preproposal draft, the Agency excluded nuisance dusts from its PEL list and requested that commenters submit data substantiating the nature of the hazard and the extent of health effects resulting from exposure to such substances. Also, in the preproposal draft, the Agency recommended that kaolin, tin oxide, glass (fibrous or dust), all currently regulated as nuisance particulates, be listed on the main PEL list. MSHA based this preliminary determination upon documentation which indicated that these substances warranted continued regulation.

As mentioned, under the proposed rule kaolin would not be listed as a specific substance but would be regulated under the respirable mine dust standard discussed below.

Tin oxide was listed separately in the preproposal draft and given a recommended full-shift exposure of 2 mg/m³ total dust and a STEL of 4 mg/m³ total dust. This recommendation was based upon the 1982 ACGIH "TLV® Booklet" which treated tin oxide as a toxic substance. Consistent with the 1989–90 "TLV® Booklet," MSHA is proposing a PEL of 2 mg/m³ total dust for tin oxide. The STEL would be eliminated.

In response to MSHA's recommendation to eliminate the nuisance dust standard, many commenters suggested that MSHA would be reducing protection provided by existing standards, which the Mine Act specifically prohibits under section 101(a)(9). MSHA has reviewed available documentation and believes that a respirable mine dust standard would more appropriately address the hazards involved in mining than a nuisance dust standard. Therefore MSHA is proposing a respirable mine dust limit, while at the same time eliminating the current nuisance dust TLV®.

Respirable Mine Dust for Metal/Nonmetal Mines

The proposed rule contains a new concept for controlling exposure to respirable mine dust at metal/nonmetal mines. It would set a permissible exposure limit of 5 mg/m³ for respirable mine dust in the PEL Table in § 58.100. "Respirable mine dust" is a new concept, although occupational exposure limits have included respirable dust limits for years. In brief, the term would include all ambient, airborne particulates capable of being inhaled into the lower respiratory tract. MSHA would sample for respirable mine dust by using a sampling device with the size-selection characteristics of a 10-mm nylon cyclone operated at a flow rate of 1.7 liters per minute, as indicated in the definitions preceding each subpart. This collection method parallels that used for respirable dust limits proposed by ACGIH.

The airborne particulates found in the mining environment are of variable composition and are not the pure substances normally referred to as "nuisance dusts." MSHA has reviewed the documentation cited below on the risks from inhalation of these particulates and believes that such inhalation may produce harmful health effects that should be regulated. The Agency believes that the concept of "respirable mine dust" appropriately addresses these hazards.

Almost all mine dust contains silica, which is by far the major cause of pneumoconiosis in metal/nonmetal miners. However, the composition of mine dust may also depend upon the minerals being produced, host rock, impurities found in the ore, coal, diesel particulates, oil mists, smoke, welding fumes, blasting products, and other contaminants. Sometimes mine dust will contain toxic components such as lead, arsenic, silica, trace elements or organic materials. Where sampling indicates that specific toxic contaminants are present, mine operators would have to control exposure in accordance with the substance-specific limits listed on the PEL Table and mixed exposure limits, in addition to the respirable dust limit. For example, if a mine dust contains beryllium and other substances, the total amount of respirable dust permitted would be 5 mg/m³, but the beryllium could not exceed 0.002 mg/m³. However, the maximum level of the mine dust would be limited by the respirable mine dust PEL to protect miners from the health risks discussed below.

MSHA is proposimg the respirable mine dust limit to protect against two respirable hazards associated with mining and mineral dusts—pulmonary alveolar proteinosis (PAP) and mixed dust fibrosis (MDF).

Pulmonary alveolar proteinosis has been associated with a variety of mineral dusts (refs. 1–8). Other dusts, such as wood dust and glass fiber, also have been linked to this syndrome (refs.

6, 9). The mechanism of this syndrome results from the abnormal accumulation of surfactant phospholipids and protein in the alveolar spaces. It was not recognized as a disease until 1958, when Samuel Rosen published the first article identifying it as such (ref. 2), and it is still not readily recognized (refs. 6, 18, 19). This is probably due in part to the lack of a clear definition of the disease. PAP often occurs in conjunction with other lung disorder, such as pulmonary fibrosis. The 1988 edition of "Pulmonary Disease and Disorders" states that:

> Pulmonary alveolar proteinosis in a disease of uncertain etiology that represents a disorder of lung surfactant homeostasis. It may not be due to a single specific etiologic insult. Treatment is supportive. It does not address the underlying etiologies or cellular pathophysiology of the disorder (ref. 1).

Until appropriate treatment was devised, many individuals with PAP died after a short course of disease, many less than a year after the onset of the disease. In Rosen's original paper, 8 out of 27 patients (30 percent) died, some only 3 months after the onset of the disease. An additional 8 out of 27 (30 percent) were reported to have not improved during the course of the study. The other cases showed some measure of improvement, but the improvement as reported by Rosen varied. However, the development of whole lung lavage, which mechanically removes the offending material by washing, has resulted in individuals surviving and recovering from the disease (refs. 1, 10–13).

The current theory, based in large part on animal data, is that PAP is a nonspecific lung response that can result from a sizeable exposure to any finely divided dust (refs. 3, 6, 8, 9, 14–17).

The case reports reviewed by MSHA have involved coal, tin, and uranium miners, as well as individuals exposed to cement, silica, bentonite, and alumina (refs. 2–5, 7). Most case reports of human PAP have simply stated that dust exposure was heavy and have not characterized the exact dust characteristics. However, one case involving alumina did characterize the dust in a lung biopsy as consisting of spheres less than 1 micron diameter. Other lung tissue biopsy data have indicated that 53 percent of the particles were less than 1 micron, 47 percent were 1 to 10 microns, and 0.4 percent were greater than 10 mg (ref. 20).

Data from animal studies indicate that dusts less than 5 microns in diameter can produce the disease in animals (refs. 8, 9, 14, 16, 17). Rats exposed to 50 mg/m ^{3} of Mt. St. Helens volcanic ash respirable dust developed alveolar proteinosis, as well as those rats exposed to 50 mg/m ^{3} quartz respirable dust. After 12 months, rats exposed to 5 mg/m ^{3} Mt. St. Helens volcanic ash had only minimal changes, consisting primarily of aggregates of dust-laden macrophages, and did not develop PAP (ref. 8). Animal studies involving quartz showed that exposure to 43 mg/m ^{3} quartz produced alveolar proteinosis but failed to produce silicosis over the time period studied (refs. 14, 15). The relationship between PAP and interstitial fibrosis is unclear. PAP may be found in conjunction with fibrosis, in which case it is called "secondary" PAP (ref. 1). Silicoiproteinosis is a common form of this secondary PAP (ref. 6). Some researchers believe that PAP may be an early stage in the development of fibrosis (ref. 21).

MSHA believes that a 5 mg/m^3 respirable dust limit will prevent miners from developing PAP from acute dust exposure.

Although silicosis and coal dust pneumoconiosis are the most common pneumoconioses found in mining, MSHA believes silicosis is not the only hazard attributable to inhalation of mine dusts. In a report on documentation on the relationship between lung function and coal dust exposure, one study states that analysis of lung function has improved in recent years, thereby increasing the clinical possibilities of examining the cause of occupational pulmonary diseases (ref. 22). The study cautions against overestimating the role of silica in such diseases and states that the toxicity of dust should not be based solely on whether they cause fibrogenic or silicotic effects. It concludes that nonsilicotic dust is also capable of producing permanent morphological changes in the bronchopulmonary system, possibly to an extent that precludes classification of such dusts as inert or innocuous.

Studies such as this indicate that dusts found in the mining environment, regardless of quartz content, can produce "mixed-dust pneumoconiosis" (MDP), also referred to as "mixed-dust fibrosis" (MDF), and therefore must be controlled in order to protect the health of miners. In addition, many of the dusts that are currently considered "nuisance dusts" fall into the category of MDF-producing dusts. MSHA believes that in order to adequately protect miners against MDF, the concentration of respirable mine dust to which workers can be exposed must be limited. The health effects of exposure to mine dusts may include pneumoconiosis, diffuse interstitial fibrosis, bronchitis, toxicity, and synergistic or potentiating effects of irritant gases. The degree of hazard presented depends upon the chemical composition of the dust, particle size, and the concentration of particles in the environment.

"Occupational Diseases—A Guide To Their Recognition" (Key *et al.*, Revised Edition, 1977) points out that the pathology of mixed-dust pneumoconiosis depends to a large extent upon the relative portion of free silica or quartz present in the airborne dust. Dusts with a quartz content of less than about 0.1 perent tend to cause development of small nodular areas in the lungs in almost direct proportion to the total amount of dust deposited, but little in the way of reticular or collagen fibrosis, and very little emphysema. The pathological lesions resemble those found in coal miners. On the other hand, dust in which the quartz content ranges from about 2 percent to about 18 or 20 percent of the total dust tends to produce lesions that more clearly resemble those seen in classical silicosis. Some examples of dust that contain almost no quartz are synthetic graphite, kaolin, talc, and iron oxide associated with welding.

Similar findings of fibrosis induced by mineral dusts of very low or no free silica content have been reported by other sources. These include animal studies and studies of mine workers (ref. 23), reports of cases of nepheline rock dust pneumoconiosis (refs. 24, 25), reports of pulmonary tissue reaction in animals and humans from barite dust (ref. 26), a literature review concerning pneumoconiosis from graphite (ref. 27), reports of pneumoconiosis in kaolin workers (ref. 28), reports of a 26-year radiographic follow-up of diatomite miners (ref. 29), and reports of disabling pneumoconiosis from limestone dust (ref. 30), and in Cornish china clay workers (ref. 31). However, these studies contain little exposure data; it is uncertain at which levels these workers were exposed.

These studies report fibrogenic lesions in both animals and humans from exposure to minerals of very low silica content. In the animal studies conducted, the fibrogenicity of various minerals was shown to vary from 25 to 50 percent of that of quartz. The quartz content of minerals used in these experiments ranged 0 to 76 percent. Of the 29 minerals used in the experiments, 13 had quartz contents of less than 1 percent and 5 were between 1 and 2.6 percent. Of these 18 minerals, most samples showed a fibrogenic reaction. A study by the Pneumoconiosis ResearchUnit Council for Scientific and Industrial Research at the South African Institute for Medical Research of 13,296

deceased miners indicates that 1.4 percent of the miners showed mixed-dust fibrosis (ref. 32). These miners worked in coal, gold, asbestos, platinum, tin, copper, iron, diamond, chrome, manganese, antimony, mica, and feldspar mines. The study concludes that there was no obvious relationship between the prevalence of MDF and the type of mine. Again, however, exposure data were poor.

MSHA believes that the 5 mg/m³ respirable mine dust limit will prevent the development of PAP and MDP. However, the Agency requests comments on available documentation further demonstrating health hazards associated with inhalation of low silica mine dust and the appropriate means for regulating respirable mine dust, including any information suggesting a PEL.

One commenter suggested that a total dust standard would be more appropriate than a respirable dust standard because a respirable dust limit does not address exposures to the upper respiratory tract. At this time MSHA does not believe that health documentation supports a total dust standard for substances containing less than 1 percent quartz.

Another commenter suggested that salt, trona, and potash operations should be regulated under a nuisance dust standard. All three were regulated by MSHA as unlisted nuisance dusts prior to July 1982. Since that time, these three substances have not been regulated by MSHA. The proposed respirable mine dust PEL would apply to the respirable fraction of the airborne dust at all mines, including salt, trona, and potash.

Controls and Respirators

Existing metal/nonmetal standards §§ 56/57.5005 require mine operators to control harmful airborne substances, insofar as feasible, by prevention of contamination, removal by exhaust ventilation, or dilution with uncontaminated air. These standards also require use of respiratory protection when accepted engineering controls have not been developed, when unusual circumstances necessitate occasional entry into hazardous areas to perform maintenance or investigation, or while controls are being installed. Whenever respirators are required, operators must implement a respiratory protection program. The existing respiratory protection program requirements for metal/nonmetal mines are incorporated by reference from the American National Standard Institute's "American National Standards Practices for Respiratory Protection," ANSI Z88.2-1969.

Existing coal standard § 70.300 requires respirators to be made available to all miners underground when concentrations of respirable dust in excess of the applicable standard are known to exist. The standard specifically prohibits the substitution of the use of respirators for environmental control measures in the active workings.

The proposed rule would require mine operators to reduce worker exposure to airbone substances through feasible engineering or administrative controls. When appropriate controls do not reduce exposure to the PEL, they would have to be used to reduce exposure as low as feasible and be supplemented with respiratory protection. MSHA intends for operators to have 6 months from the date of publication of the final rule in the Federal Register to comply with the new standard through any combination of controls and respiratory protection. The Agency believes that the 6-month period from the date of publication would give operators reasonable opportunity to evaluate exposures and comply with any new limits with a combination of controls and a respiratory protection program. Within one year from the date of publication of the final rule in the Federal Register, operators would have to institute all feasible controls to meet permissible exposure levels. Respiratory protection would be required only as a supplement for controls. Given the present state of the art in mining technology, all operators can reasonably achieve the proposed limits within one year. On June 5, 1989, OSHA published a proposed rule addressing methods of compliance and the hierarchy of controls (54 FR 23991). As a result of this rulemaking, OSHA may change its hierarchy of controls, which is similar to that proposed by MSHA. MSHA requests public comment on what the hierarchy of controls should be for the mining industry and the period of time it should take to comply with a final rule.

Engineering controls reduce exposure by modifying the source of, or decreasing the concentration of, potentially harmful substances in the workplace. Examples of engineering controls are local exhaust ventilation, enclosures, barriers, or suppression methods that eliminate or reduce the dispersion of the substances. Exposures may also be controlled by substituting less hazardous materials in the process used. The most common method of engineering control in mining is ventilation. Local exhaust ventilation prevents exposure by capturing the contaminant at its source before it escapes into the work environment.

In mining, as well as in general industrial hygiene practice, the concept of engineering controls represents an integrated approach to controlling exposure. Generally the airbone contaminant has multiple sources in the workplace. For example, dust may be generated from drills, crushers, conveyors, baggers, and travel surfaces. In this situation, the engineering controls would probably include both general and local exhaust ventilation, suppression or dispersion controls, isolation, as well as housekeeping practices such as vacuuming or wet mopping instead of dry sweeping. This integrated approach allows the operator to optimize the controls that best fit the particular operation. Some operators may choose a more costly ventilation control system that collects dust in order to reduce or eliminate the need for manual cleanup, while others may opt for regular housekeeping of a work area.

In a recent report, the Congressional Office of Technology Assessment found that health professionals rank engineering controls as the priority means of controlling exposure, followed by administrative controls, with personal protective equipment as a last resort. If the primary control method involves the use of process containment, then such method can be supplemented by the availability of personal protective equipment. If respirators are the primary method of control, then the opportunity to provide supplemental protection is eliminated because the personal respiratory protection is already the final resource. Work practices frequently fall between engineering controls and respiratory protection ("Preventing Illness and Injury in the Workplace," Office of Technology Assessment, U.S. Congress, April 1985).

Engineering controls inherently provide more consistent and reliable protection than respirators because they do not depend upon constant human supervision or intervention to function, whereas respirator programs require continued administrative attention. Once engineering controls are installed and adequately maintained, they usually provide consistent and reliable protection to all workers. They do not depend, as do respirators, on maintaining an appropriate fit for every individual in order to provide protection. Also, monitoring devices can measure the amount of protection that engineering controls provide the worker, whereas it is difficult to make periodic measurements of a respirator's effectiveness. MSHA's experience indicates that, when respiratory protection has been used for long-term

protection in mining, the effectiveness of such protection is difficult to maintain.

Administrative controls may be used as an alternative to engineering controls. Administrative controls are the reduction of time during which a worker is exposed to a hazardous substance. Such controls include use of work practices, personal work schedules, and production or operation schedules to reduce exposure. For example, a miner who would normally work 8 hours in an exposed environment could work only 4 hours in the exposed environment and be changed to a nonexposed work area while another person takes over the latter half of the job assignment in the exposed area. Few comments were received on the use of administrative controls. One of the greatest limitations to its use is in mines where jobs are usually well defined, making it difficult to reassign workers.

A respirator is a device worn by the individual miner and designed to protect that particular miner from inhaling the harmful airborne substances in the work area. Respirators are designed to protect against hazardous atmospheres ranging from irritation to atmospheres immediately dangerous to life and health (IDLH). The hazard may be caused by one or many substances, ranging from particulates to gases. Protection may be required intermittently or for long periods of time. While many types of respirators have been developed for various conditions, they are all limited in protection and application. Studies have indicated many limitations involving respirators. They include cartridge effectiveness, breathing resistance, medical effects, psychological problems and interaction with other safety equipment and work (refs. 33–52).

The primary disadvantage of using respirators is that they are less effective than engineering controls in most workplaces in mines. MSHA's experience regarding respiratory protection in mining supports this. Other research conducted in the workplace indicates that the protection provided by respirators is unequal, highly variable, and substantially lower than predicted from laboratory data as summarized in "Preventing Illness and Injury In The Workplace" by the Office of Technology Assessment. Moreover, the effectiveness of the respirator is dependent largely upon appropriate selection. A health hazard may be created if failure occurs in the protective capacity of the respirator against the airborne substances in the mine without the wearer's knowledge. Therefore respirators cannot achieve their full protective potential without a program that includes selection, fit testing, training, and maintenance, as well as an insistence that workers wear the respirators.

Until recently silica flour operations had difficulty complying with the silica standard with engineering controls. Because of the high silica content and size distribution at these operations, extensive engineering controls are needed which can be extremely expensive and complex to retrofit. Thus such controls have taken most operators years to install. Nevertheless, improved engineering technology has reduced the number of silica operations out of compliance. Presently the greatest noncompliance problem results from poor maintenance and cleanup procedures.

MSHA has 22 active silica flour operations. Since January 1, 1989, 22 citations have been issued at these operations due to overexposures to the silica PEL. For those operators that are out of compliance, most have poor housekeeping and maintenance procedures. In order to avoid overexposure to silica dust, strict adherence to procedures such as not dropping bags of the product and avoiding dry sweeping, along with daily pre-shift checks of dust collectors, would assure greater compliance. Most operators, even when the PEL is not exceeded, require workers to use respiratory protection, especially at bagging facilities.

Health data indicate that respirator use alone has been unsatisfactory and that the high ratio of silicosis is due to ineffective respiratory protection programs and failure to monitor (NIOSH HETA–79–104–107, 79–103–108). Clearly, respirators must be used with adequate respirator programs if they are to protect workers. Follow-up medical examinations showed that miners employed at these plants had an excessive prevalence of silicosis and development of complicated silicosis (PMF) within a relatively short time. In these reports, NIOSH stated:

> In conclusion, the very high prevalence of silicosis is due to the respirable size of the particles, the high free silica content of the dust, excessive respirable dust levels and ineffective respiratory protection (NIOSH HETA–79–104–107 and 79–103–108).

MSHA would continue to require that all feasible engineering or administrative controls be installed and supplemented with respiratory protection at silica flour mills. However, the proposed rule would require operator monitoring whenever respiratory protection is required to be used to provide assurance that the respirators are providing the necessary protection.

The most cited disadvantage of engineering controls is cost. The cost-effectiveness issue is raised primarily by operators concerned that they would be required to install controls that lower exposure levels, but not to compliance levels. When this occurs, respirators would be required in order to further reduce exposures to the permissible limit. Some operators believe that costs to install such engineering controls are wasted since they still have to resort to respirators. However, in such instances respirators supplement the protection provided by the engineering controls and do not function as the sole line of protection for the worker. In addition, it has been MSHA's experience that the type of respirator needed to protect workers in atmospheres without engineering controls would be more costly for operators and burdensome to workers than the type of respirators required to supplement engineering controls that have reduced exposure to as low as feasible.

In the metal/nonmetal preproposal draft, MSHA requested comments on the use of respirators as an alternative to, or in combination with, controls where respirator use could provide equivalent protection. MSHA asked for data on processes, operations or circumstances in which respirators could be as effective as controls in achieving health protection along with progress in respirator design and technology. MSHA also requested information on the health effects of respirator use in mines where engineering or administrative controls have not been feasible. The Agency received few comments and little verifying data. To date, MSHA's data indicate that engineering and administrative controls are more effective than respirators. However MSHA still solicits comments regarding this issue.

MSHA is seeking comment on the controls to be used for protection of miners. In particular, MSHA requests information that would help the Agency to focus on three primary policy considerations.

The first consideration is health protection. It has been postulated that there may be instances where respirators would provide protection to employees equivalent to engineering controls and that their routine use should be permitted.

The second consideration is that respirator technology and use practices have progressed significantly since initial adoption of MSHA's compliance

requirements in the 1970's. As a result of many of these advances, the consensus among some occupational health professionals concerning what constitutes a reasonable effective respirator program has changed. This point is demonstrated by the issuance of the American National Standards Institute (ANSI) Z–88.2–1980 standard entitled "Practices for Respiratory Protection," a revision of the 1969 ANSI standard. In addition, improved respiratory protection programs are currently being addressed in this rulemaking. Therefore it is possible that, in the presence of such programs, respirators could be capable of playing a more significant role in air contaminant protection than they do in the existing standards.

The third consideration is cost effectiveness. There may be instances where the cost of engineering controls would exceed the expected costs of respiratory protection and where the routine use of respirators may provide adequate employee protection. Should such instances exist, reasonable allowances for the use of respiratory protection should be made.

The question arises as to whether there are circumstances in the mining workplace where the protection afforded by respirators would be equal to the protection provided through implementation of engineering controls. In particular, the question arises as to whether there are circumstances where the costs of the respirator program would be less than those of engineering controls and yet equal protection would be afforded by either. Are there circumstances in which cost-effectiveness factors are a legitimate consideration in determining the acceptability of one exposure control method over another? Also, what workplace factors would have to be considered to evaluate the effectiveness of a control method before costs could be taken into account? MSHA seeks comment on how factors such as described below should be taken into account by MSHA or the employer in determining the acceptability of using either engineering controls or respirators. Workplace factors that may affect the performance and degree of protection provided by exposure control means may include: Number of exposed employees and number of employees with respirator-fit problems; severity of acute and chronic health effects; length and frequency of exposure; ability to measure and ensure the adequacy of exposure control; work rate; temperature and humidity of the workplace; ability to assess the probability of protection failure; detectability of control failure before harm; and the extent to which employees may be expected to wear respirators for any required period. It has been suggested that engineering controls are particularly preferred where health effects are more severe, where there are more lengthy and frequent periods of exposure; where respirator failure warning properties do not exist; where the work rate exertion level is greater; where significant respirator fit problems exist and where extreme temperature and humidity conditions exist. MSHA raises for comment the question as to how or if these workplace factors should be viewed in deciding whether engineering controls or respirators are more appropriate and, further, how these factors could be reflected in a final rule to define those circumstances where respirator use would provide appropriate protection and thus would be permitted under the rule. How would it be determined that employees would be provided with the desired degree of protection?

MSHA maintains its support for a continuance of its existing compliance method hierarchy but, as the preceding discussion indicates, is open to discussion of whether, under certain specific sets of circumstances, it may be appropriate to allow respirator use in lieu of feasible engineering controls, thus providing flexibility in determining the appropriate method of compliance. For example, MSHA seeks comment on a requirement to permit respirator use in lieu of feasible engineering controls in certain instances where the employer has submitted a comprehensive written respirator compliance program to the Agency. This compliance plan would be subject to MSHA approval and would be required to demonstrate to the agency that the use of respirators under the circumstances described would provide protection to the employee equivalent to that afforded if feasible engineering controls were implemented. MSHA believes, however, that this flexibility may not be appropriate where the substance involved is a carcinogen, has no identified dose-response threshold, continues to pose a significant risk at the PEL, has no respirator breakthrough warning properties, or if there are no means of determining the specific in-use effectiveness of the respirator. On the other hand, if the effectiveness of respirators can be monitored readily in some manner, such as by biological monitoring, it may be appropriate to permit their limited use. The Agency solicits comment on the issue of MSHA-approved respirator use. Views are sought on criteria that should be considered and met for respirator compliance program approval and on circumstances, as suggested above, under which respirator use should not be permitted in lieu of feasible engineering controls.

Some commenters stated that engineering controls are too costly, and MSHA should require only those engineering controls that are effective in reducing the exposure to the PEL. Other commenters suggested that MSHA allow operators to use respirators rather than engineering controls, especially when the controls may not reduce the exposure to the PEL. Though the proposed rule allows greater use of respiratory protection in most instances, MSHA believes that respirators should only be used as an interim method of protection since their effectiveness may be secondary to that of engineering and administrative controls. While in some instances a single engineering control may not reduce the exposure to the PEL, a combination of controls, such as local exhaust ventilation and good housekeeping, may bring the operator within compliance. The operator has the flexibility to choose those controls which would be the most effective in reducing the exposure. However, the cost of a total respirator program must be figured into the cost of respiratory protection, especially when making comparisons between engineering controls and respirators. Such long-term costs can exceed those associated with the long-term cost of effective engineering controls.

Some commenters stated that the primacy of engineering controls should be determined by: (1) The achievable reduction of the air contaminant; (2) the number of employees exposed; (3) the seriousness of the hazard; and (4) costs to operators. The proposed feasibility criteria responds to these comments. However, it must be noted that MSHA's statutory mandate requires MSHA to protect all miners, regardless of the number exposed.

One commenter stated that engineering controls should be required only when necessary to maintain exposure below the level of an immediately dangerous to life or health (IDLH) atmosphere. The commenter did not believe that engineering controls should be required if exposure is below the IDLH level, although above the PEL, when controls would not reduce exposure to the PEL. According to this commenter, such a requirement represents a wasteful use of resources with no accompanying benefit to

employee health, since respiratory protection would still have to be worn. This commenter stated that the determination as to the extent of engineering controls and respirator usage should be based upon evaluation of the conditions by the operator's industrial hygienist. However, less than one percent of mines have industrial hygienists on staff to make such determinations. Moreover, the concentrations of contaminants below a level immediately dangerous to life or health, yet above the PEL, can cause serious harmful effects because the documented hazard is likely to result from exposure above the PEL. Respiratory protection for many contaminants in the range below the IDLH level, but well above the PEL, would require employees to wear supplied-air, self-contained respirators, or full-face gas masks. This type of respiratory protection is difficult to use routinely in the mining environment because of the type of work and the physical activity, mobility, and visual acuity needed. For example, the IDLH level for ammonia that is generally recognized by the industrial hygiene community is 500 ppm, while the TWA is 25 ppm. At levels above 300 ppm to the IDLH level, a gas mask would have to be used in order to protect the worker adequately. At this concentration, eye and respiratory tract distress would occur with respirator leakage or failure. For hydrochloric acid, the IDLH level is 100 ppm and the ceiling limit is 5 ppm. An exposure level above 50 ppm to the IDLH level would require a full-face cartridge respirator or gas mask. Exposure to these levels would be intolerable if failure or leakage were to occur.

A commenter suggested that the Agency allow respiratory protection in lieu of engineering and administrative controls for cleanup activities. The Agency presently believes that because cleanup activities are more routine than occasional and inherently cause high levels of contaminant concentration, they necessitate use of feasible engineering or administrative controls. However, comments are specifically requested on this issue.

Sections 58/72.610 Abrasive Blasting

Surface Mines and Surface Areas of Underground Mines

Existing metal/nonmetal §§ 56/57.5010 prohibit use of silica sand or other materials containing more than one percent free silica as an abrasive substance or in abrasive blasting cleaning operations at all surface mines and the surface of underground mines unless the user is protected with a full-flow respirator or equivalent. This proposed standard is not intended to be a comprehensive safety and health standard on abrasive blasting. It is meant to replace existing provisions. MSHA will continue to evaluate the need for additional rulemaking on abrasive blasting.

The term "full-flow" respiratory protection used in the existing standard would be deleted and replaced by "a supplied-air respirator approved for abrasive blasting." The proposed rule would not contain the specifications of the respirator that were included in the metal/nonmetal preproposal draft, because the description "supplied-air respirator approved for abrasive blasting" would require respiratory protection specifically approved under 30 CFR part 11 for abrasive blasting.

Currently MSHA does not explicitly regulate abrasive blasting at either the surface coal mines or surface worksites of underground coal mines. However, § 77.1710 requires protective clothing for protection against the impact of particles from such operations.

Under the proposed rule, at both coal and metal/nonmetal surface operations supplied-air respirators approved for abrasive blasting would have to be used when abrasive blasting is done with silica sand or other materials containing more than one percent quartz, unless the work is performed in a totally-enclosed device with the operator outside the device. Several types of abrasive-blasting booths are commercially available and can be used successfully without causing any exposure to the miner. Such booths would provide equivalent protection without the burden of abrasive-blasting respiratory protection.

Exposure to silica is the major health hazard in abrasive blasting. The Agency believes that the difficulty in ventilating this type of operation and the potential of contaminating mine air, which could expose many people to the respirable silica health hazard, create too great a health risk to allow the procedure underground.

Abrasive blasting is used primarily for cleaning equipment. Rebounding or ricocheting abrasive materials, caused by high velocity impact on the blasted surface, could penetrate normal personal protective equipment and expose the miner to serious hazards. Respirators approved for abrasive blasting would be required in part because they are designed to protect the wearer's head and neck against impact and abrasion from rebounding material, regardless of the abrasive material used. The respiratory protection also provides additional protection from potential exposure to toxic contaminants attached to the article being blasted that could become airborne as a result of the abrasive blasting.

Heavy respirable dust clouds are generated in the immediate vicinity of the abrasive-blasting operation because of the high-velocity impact and subsequent grinding of the abrasive materials along with other potential contaminants. Because the respirable fraction of airborne particulates is high, a much greater potential respiratory health risk occurs, thus necessitating restrictions on the activity. Abrasive-blasting sands may contain high concentrations of quartz, organic or inorganic abrasives, all of which pose a serious health hazard to exposed workers. Also, a hazard may result from high concentrations of the base metal that may be removed during blasting and from any surface coating. Miners may be exposed to lead-based paints and chemical contaminants from the surface of articles that are cleaned. Many operators reuse abrasives, which allows the concentration of metal dusts or other contaminants to accumulate. MSHA found that one slag abrasive used in industry contained significant quantities of lead, cobalt, and cadmium. Therefore operators should be aware of exposure risks when doing abrasive blasting.

One commenter stated that the requirement for "all exposed persons" to wear respiratory protection needed clarification because it could be interpreted too broadly. MSHA interprets "all exposed persons" to mean only those persons directly exposed to the abrasive-blasting operation by immediate location and involvement in the operation. The need for respiratory protection or other personal protection for incidental exposures, such as to workers passing nearby or working in an adjoining area, would be determined on a case-by-case basis through exposure monitoring or the observance of flying debris. Under normal circumstances, abrasive-blasting operations are isolated and would not expose other workers. When abrasive blasting cannot be isolated because of the nature of the task, then all persons exposed to flying debris or above the PEL must be protected.

Underground Areas of Underground Mines

Existing metal/nonmetal § 57.5016 prohibits operators from using silica sand or other materials containing more than 1 percent free silica as an abrasive

substance in abrasive blasting operations underground. The proposed rule would retain this prohibition for metal/nonmetal mines due to the likelihood of inhalation of silica being carried throughout the mine by the ventilation system, thus exposing unprotected workers. MSHA does not explicitly regulate abrasive blasting underground at coal mines. However, § 75.1720 requires protective clothing for protection against the impact of particles from such operations. The proposal would explicitly prohibit the use underground of abrasives containing more than 1 percent silica at coal mines. There are substitute abrasives such as steel shot or artificial abrasives that have been used effectively for this type of activity underground.

If substitute abrasives are used and there would be no overexposure to substances on the PEL Table, MSHA would still require that abrasive-blasting protection be used at metal/nonmetal and coal mines according to §§ 56/57.15006, 75.1720 and 77.1710. Rebounding or ricocheting abrasive materials caused by high-velocity impact on the blasted surface provides ample opportunity for penetration of regular personal protective equipment. MSHA believes that the additional devices on abrasive-blasting respirators are necessary because they are designed to protect the wearer's head and neck against impact and abrasion from rebounding material.

Sections 58/72.620 and 72.630 Drill Dust Control

MSHA proposes no substantive changes to the existing §§ 56/57.5003 for drill dust control at metal/nonmetal mines. However, this standard would be a new requirement for surface coal mines. The Agency would require that drill holes be collared and drilled wet or that other effective dust-control measures be used when drilling non-water-soluble materials. Effective dust-control measures would also be required when drilling water-soluble materials.

At underground coal operations, the provisions contained in §§ 70.400 through 70.400–3 would be recodified as §§ 72.630. Existing § 70.400 would be amended in proposed § 72.630 to require that dust collectors be maintained in permissible operating condition when they are provided as a method of controlling dust. Because MSHA has enforced these standards as part of the existing respirable dust standard for underground coal mines, the Agency proposes to retain the existing provisions except for strengthening the maintenance requirement for dust collectors.

MSHA believes that a specific standard addressing the dust hazards of drilling continues to be warranted due to the likelihood of overexposure inherent in such drilling operations. In addition, basic and effective control technology is readily available. Most problems with this technology are usually the result of human failure rather than a breakdown in the controls; for example, when the equipment operator fails to turn on the water, water-holding tanks are not filled, or bags on dust collectors are not emptied when full. These failures are easily and quickly corrected, restoring the effectiveness of the dust-control system.

MSHA experience has shown that drilling without effective dust controls is highly likely to result in overexposures to the drill operator and other workers in the drilling area. Dust generated by drills underground can be carried throughout the mine by the ventilation system, creating contaminated air throughout the mine and exposing unprotected miners.

Pneumoconiosis began to receive increased attention toward the end of the last century as a result of the introduction of machine drills and the large quantity of dust they generate. Wet drilling as a dust-control measure has been in use as early as 1922. Wet drilling has long proven to be an inexpensive, practical and effective dust-control measure for drilling non-soluble materials. Effective dry-dust collectors are also readily available from several equipment manufacturers for drilling both water-soluble and non-water-soluble materials.

Sections 58/72.200 Exposure Monitoring

Section 103(c) of the Mine Act states that:

> The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall issue regulations requiring operators to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any applicable mandatory health or safety standard promulgated under this Act. Such regulations shall provide miners or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each miner or former miner to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each operator shall promptly notify any miner who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable mandatory health or safety standard promulgated under section 101, or mandated under title II, and shall inform any miner who is being thus exposed of the corrective action being taken.

Existing §§ 56/57.5002 and 71.701 require metal and nonmetal mine operators to conduct dust, gas, mist, and fume surveys when necessary to determine the adequacy of controls. Existing §§ 71.701 (a) and (b) state that the Secretary will take air samples to determine concentrations of noxious or poisonous gases, dusts, fumes, mists, and vapors in surface installations and at surface worksites. Upon the Secretary's written notification to the coal operator, the operator must conduct any additional air-sampling tests and analyses as the Secretary may from time to time require in order to ensure compliance.

The proposed standard would address the following aspects of exposure monitoring: frequency, procedures, recordkeeping, access to records, observation of monitoring, and notification of overexposure.

Frequency

The proposed rule would require exposure monitoring under the following circumstances: When the operator has reason to believe that a change in production, process, materials, equipment, or engineering or administrative controls would increase a contaminant's concentration above the PEL listed on the PEL table; upon installation of controls that are used to reduce exposure to the PEL; and upon modification of existing controls that are used to reduce exposures to the PEL. The purpose of operator monitoring would be to evaluate the effectiveness of the controls. MSHA intends that mine operators monitor when existing controls are modified to bring exposures into compliance. It is not MSHA's intent to require monitoring when modifications are made for purposes other than reducing exposure; for example, replacing a fan. MSHA intends that the monitoring would continue until the concentration is at or below the PEL, as determined with 95-percent confidence. This would ensure that the operator has determined that affected miners' exposures are at or below the PEL with statistical certainty. Specifying only the confidence level allows the operator to choose from the full range of sampling and analytical options available. In choosing the sampling and analytical methods, the operator would be able to identify the number of samples as well as the concentration range needed to ensure that the permissible limits are not exceeded at a 95-percent confidence level. Although an

operator using detector tubes would have a different strategy than an operator using a field electronic gas analyzer, both methods would be able to determine whether exposures are at or below the PEL at 95-percent confidence.

When production changes occur, there is a possibility of increasing the concentrations of airborne substances. Changes in the material being mined or processed can also increase airborne concentrations or introduce new substances unrecognized in previous sampling. However, at most mines exposure monitoring would be triggered only by major changes in production, processes, material, equipment, engineering or administrative controls. Minor changes are unlikely to alter exposure levels significantly and are not usually of concern except at operations where airborne concentrations already border on the PEL. Areas where exposure levels are well below the PEL would most likely remain so. In some instances, even major changes might not necessitate monitoring if the exposure levels were very low prior to the changes. The Agency intends for operators to exercise the standard of care that a reasonable operator would take to guard against an overexposure.

Under the proposed standard, a 3-month interval sampling program would be required when respirators must be worn in order to verify their adequacy. MSHA believes that the 3-month interval is adequate to detect potential increases in contaminant levels due to seasonal changes and provide information on trends that may be useful for contaminant-control strategies. Many commenters suggested that this provision would require all operators to sample every 3 months. However, MSHA intends that this requirement would apply only to those operations where respiratory protection is required by MSHA's standards. MSHA requests comments on the appropriateness of the frequency of exposure monitoring, especially with regard to the 3-month interval. Also, is it possible to devise a more performance-oriented approach that increases monitoring where exposures are highly variable and reduces monitoring where exposures are predictable? This monitoring requirement does not affect the existing respirable coal mine dust sampling provisions in §§ 70/71.201 and 90.201.

Some commenters stated that the monitoring standard would require operators to sample for all the substances on the PEL table. While operators would be responsible for knowing what substances are on their property, MSHA intends that they sample for those substances that have not been reduced to the PEL at the particular mine site or could increase to concentrations above the PEL due to change in production, process, materials, equipment, or controls. MSHA would expect monitoring for only those substances that are present at the particular mine site.

In the metal/nonmetal preproposal draft, MSHA included a provision requiring monitoring whenever persons exhibit signs or symptoms that could be attributable to workplace exposure to any substance in the PEL table. Because such signs and symptoms are not always attributable to workplace exposures, the Agency is not proposing this requirement.

Many commenters suggested that MSHA retain the existing performance standard rather than the more specific proposal. MSHA believes that the existing standards need further clarification. At this stage, the Agency believes that the proposed monitoring requirements are necessary to provide adequate guidance as to the Agency's intent and to provide appropriate health protection for miners.

Several commenters suggested an initial monitoring provision in order to determine if a person may be exposed to any of the substances in the PEL table. The proposed rule would require operators to sample whenever the PEL could be exceeded. The operator would have to identify those chemicals in the process that could exceed the PEL. It would not be necessary for the operator to sample for every chemical, only for those that could exceed the PEL. In addition, much of the initial monitoring would be done by MSHA as part of its enforcement sampling during required inspections (underground mines quarterly; surface mines semi-annually), as well as by State agencies and insurance carriers. This should be sufficient initial monitoring.

Sampling Procedure

The proposed rule would require monitoring samples to be representative of exposures during the workday. The mine operator would have the flexibility to conduct either personal or area sampling, as long as the sampling results accurately represent the exposure of each miner for whom the monitoring is required. Personal sampling does not require separate measurements for each miner exposed, as long as adequate sampling is done to allow the operator to determine each miner's exposure. For example, if a number of miners perform essentially the same job under the same conditions, even on different shifts, it would be sufficient to monitor those few miners expected to have the highest exposure to obtain data that are representative of the remaining exposed miners.

The proposed rule would require that the samples be collected and analyzed by appropriate instrumentation and methods. The instruments used to measure exposures would have to be maintained and calibrated. Accurate measurements of exposure can be obtained only when the instruments used are functioning properly and have been calibrated to the manufacturer's specifications. In addition, MSHA would require that the samples be collected and analyzed by persons trained or experienced in the procedures. Knowledgeable personnel help ensure that sampling will be representative of worker exposures. Several commenters suggested that MSHA specify the type of sampling equipment, methods, and analysis procedures to be used and that equipment used for sampling by MSHA and NIOSH be required. However, with the exception of respirable dusts, which are defined in part by the sampling method used, to place such specifications within the standard would restrict use of future improvements in monitoring technology. Upon request, MSHA will provide its sampling and analytical methods.

Recordkeeping for Exposure Monitoring

To implement the provisions of the Mine Act regarding records of employee exposure, MSHA is proposing that mine operators maintain a record or required monitoring. The mine operator would have to retain such records for 5 years.

Some commenters indicated that the 1-year record retention period in the metal/nonmetal preproposal draft was too short and should be consistent with OSHA's minimum 30-year retention period in 29 CFR 1910.20. These commenters believe that such records could be useful for epidemiological studies and compensation claims by workers. It is not the Agency's intent to establish a long-term inclusive exposure-record system for epidemiological purposes. Mine operators may voluntarily retain exposure records for a longer period. However, at this time, MSHA intends that the proposed 5-year retention period serve as a tool for analyzing the effectiveness of established controls and give an indication of seasonal or production trends associated with overexposure. If respirators are used, monitoring records also serve to determine whether the respirators are being used within their protection limitations. MSHA requests comments

regarding the record-retention period, including any benefits of lengthening it, along with who should retain the record.

The proposed standard would require the mine operator to make monitoring records available to MSHA. MSHA intends to review these records during inspections in order to be alerted to problem areas of the mine. The operator could use this record to determine progress, over a period of time, toward implementation of controls that would keep exposure at or below the permissible exposure limit.

In order to reduce the operator's paperwork burden, this record may be used to inform the employee under the notification requirement of this standard. However, operators may use some other format of notice for miner notification, as long as the substance to which the person has been overexposed and the corrective action being taken are included.

The record must contain eight informational items that are necessary for determining an individual's exposure: The date of sampling; the name of miner or location of work area in which each sample was collected; substances sampled; the sampling and analytical method used; the duration of sample; the concentrations of each substance determined by sampling; the person conducting the sampling and analysis; and the corrective action being taken if exposure is above the PEL. MSHA believes that these items are the minimum requirements for an effective monitoring program. MSHA requests comment on whether the record should include the names of the miners for whom the exposure is representative and the utility of such information.

One commenter suggested that operators be required to record exposure for only those persons wearing a personal sampling device. The proposal does not reflect this comment since each affected miner's exposure must be recorded even though only a few representative personal samples have to be taken. Monitoring and exposure records provide essential information to persons affected by the contaminants by informing them of their own exposure and the corrective action being taken to eliminate or avoid future exposure.

Access to Exposure Records

Miners would have access to their records for examination and copying. Miners' representatives would have similar access to the records of all miners whom they represent. Miners could also designate other individuals or organizations to have access. Former employees would also have access to records of samples that reflect their exposure. These provisions are required by the Mine Act. The mine operator would have to provide copies of the records at the operator's expense.

Workers would have 5 years from the sampling date to examine and copy their exposure records. MSHA believes the 5-year record retention period gives each employee an adequate opportunity to obtain this information. Each designated representative of miners would also have the same time period to obtain monitoring results required by the proposed standard for those miners whom they represent.

Many commenters suggested that the Agency clarify these provisions to state that miners are entitled to access to records of their own exposure and representatives of miners are entitled only to records of miners whom they represent. The proposed rule reflects these recommendations. The Agency intends that miners and their representatives be given the opportunity to review and copy such records. MSHA does not intend that miners have access to records of all monitoring, only to records that reflect their own exposure.

Operators would be required to transfer all records required by this subpart to any successor operator. Where there is no successor operator, the proposed rule would require that operators notify affected miners of their rights of access at least 3 months prior to disposal of the records.

Observation of Monitoring

The proposed rule would require the mine operator to provide affected miners or their representatives with an opportunity to observe required monitoring. Commenters preferred that only representatives of miners be given the opportunity to observe monitoring. However, under the Mine Act both miners and their representatives may observe such monitoring. Commenters requested that the Agency clarify whether statutory "walkaround pay" would apply to such observance. Section 103(f) of the Mine Act requires "walkaround pay" when a representative of miners who is employed by the operator accompanies an MSHA inspector during an inspection of the mine. Section 103(f) does not authorize "walkaround pay" for time spent by a representative of miners observing an operator's monitoring program. Therefore, MSHA does not intend for "walkaround pay" to apply to this standard.

Notification of Overexposure

This provision would require mine operators to notify miners in writing within 15 days when a sample indicates that their exposure has exceeded a permissible exposure limit and what corrective action is being taken. MSHA believes that this time is adequate for the operator to perform the administrative tasks necessary to issue the notification.

Sections 58/72.300 Dangerous Atmospheres

This section would address the problem of entry into areas with dangerous atmospheres. During the last 10 years, 61 injuries and 1 fatality have occurred in metal/nonmetal mines and 13 injuries and 1 fatality have occurred in coal mines due to health hazards in confined spaces. The proposed standard would not apply to the special emergency conditions of underground rescue and recovery operations, which are addressed specifically in 30 CFR Part 49 for mine rescue teams.

Paragraph (a) would require testing for hazardous gases, vapors, and oxygen deficiency prior to entrance into areas that have the potential for very hazardous environmental conditions. These areas include abandoned areas underground; silos, vats, tanks and other confined spaces; and areas where there has been a release of contaminant that could cause an acute respiratory exposure that poses an immediate threat of loss of life, immediate or delayed irreversible adverse effects on health, or acute eye exposure that would prevent excape from a hazardous atmosphere (IDLH atmosphere). This testing, which could be for toxicity, flammability or other inherent hazards, would determine whether or not the atmoshere is safe to enter. In the metal/nonmetal preproposal draft, the testing requirement was included under the draft standard for exposure monitoring. MSHA would include this requirement under the dangerous atmospheres standard in the proposed rule to emphasize the importance of such testing under the specific circumstances listed.

In the preproposal draft, the Agency required operators to sample for "toxic gases" and oxygen deficiency prior to entering a confined space or previously sealed workings. Commenters objected to use of the term "toxic gases" and stated that it was ambiguous. The proposed rule uses the more generic term "hazardous gases." Certain gases, although not toxic in nature, can be asphyxiants by displacing oxygen or can be flammable or combustible. This condition can occur especially in areas where ventilation is poor. Area samples may be the most appropriate means of determining concentrations prior to

entry into confined spaces or areas where there has been a liberation of any contaminant in sufficient quantities to create an IDLH atmosphere.

Commenters suggested that "confined space" be defined, and MSHA agrees that the term needs some explanation. The proposed rule defines "confined space" as areas having restricted means of entrance, unfavorable atmospheres, and which are not intended for continuous occupancy. The restricted nature of confined spaces makes the problem of harmful gases or oxygen deficiency particularly critical should rescue measures be necessary.

Another commenter stated that there were no circumstances in which oxygen deficiency would pose a hazard to persons at surface operations. MSHA's accident records show that oxygen-deficient atmospheres have occurred as a result of work activity in confined spaces such as bins, hoppers, tanks, conveyor tunnels, dust collectors, crushers, and grinding mills, all of which may be found at surface operations. These records include multiple fatalities in which the would-be rescuer succumbs to the same oxygen-deficient atmosphere as the original victim. In addition, MSHA's own data indicate that confined space accidents causing injuries and fatalities have occurred when painting inside a dragline bucket, entering into acid storage tanks, maintenance in dust collection devices, and welding in such areas as dryers, tanks, and chutes.

Paragraph (b) would require that all work areas contain at least 19.5 percent oxygen by volume. If the oxygen content of the air falls below that level, mine operators would be required to take immediate corrective action to restore the level to at least 19.5 percent. At most altitudes where people work, air normally contains about 20.9 percent oxygen; therefore, levels below 19.5 percent indicate that an oxygen-deficient atmosphere is developing that warrants attention. The corrective action needed may be as simple as increasing ventilation to an area. Both OSHA and the American National Standards Institute (ANSI) specify 19.5 volume percent oxygen as the level for determination of an oxygen-deficient atmosphere.

Existing §§ 57.5015 and 75.301 require that 19.5 volume percent oxygen be maintained in all active workings underground. The metal/nonmetal preproposal draft recommended that the same percentage of oxygen be maintained at "all active workings," including both surface and underground mines. Because of the potential presence for oxygen-deficient atmospheres in confined spaces, the Agency continues to believe that this standard is appropriate for both surface and underground mines, including surface coal operations and facilities.

If the oxygen content of the air falls below 19.5 percent, workers not wearing respiratory protection in accordance with §§ 58/72.500 would have to be withdrawn.

Oxygen deficiency results in a reduction of the oxygen supply to the blood and retardation of the oxidizing processes in the brain that leads to disturbances of the central nervous system. A sudden decrease of the oxygenation of the blood can lead to loss of consciousness within 1 minute without any warning symptoms. A gradual decrease in oxygen content may cause dizziness, tachypnoea, or tachycardia, followed by a gradual decrease of physical and mental capacities beginning with changes in the sensory and mental functions (vision, hearing, perceptions, memory, attention, and judgment). The speed of onset of these symptoms depends upon the magnitude of the oxygen deficiency. Both rapid or gradual decreases in oxygen conditions have caused fatalities and injuries in mining.

The oxygen level in an area may be reduced by consumption or displacement. In a confined space, combustion of flammable substances such as from welding or flame cutting, bacterial action, and chemical reaction (possibly the oxidation of metal or rusting) can all cause an oxygen-deficient atmosphere. Oxygen can also be displaced by another gas, either naturally, such as carbon dioxide, or by inert gases introduced through work activity, such as during welding.

Paragraph (c) would require operators to take precautions as specified in the standard when entering an oxygen-deficient atmosphere listed in the table or any of the potentially dangerous atmospheres listed in paragraph (a). Respiratory protection would be required. There would have to be at least one standby person outside the affected area with equipment capable of rescuing the other person without entering the area. If equipment for a one-person rescue is unavailable, a two-person rescue system capable of recovery of the affected person would be necessary. This practice is recommended in the International Labour Organization's "Encyclopedia of Occupational Health and Safety" (3rd Edition). Communications would also be required between the standby person and the persons entering or working in the hazarous atmosphere. Communication is necessary to recognize early distress and to have adequate time to rescue the exposed worker. The body positions that are assumed in a confined space could make it difficult for a standby rescuer to detect an unconscious person. Usually, voice communication would be sufficient. However, surrounding noise levels, obstructions, or distances between workers and standby persons are some circumstances that may require other types of communication, such as timed lights or buzzers. MSHA recognizes that these provisions may not address every possible precaution for confined spaces, such as permit systems. The Agency is developing an advance notice of proposed rulemaking on confined spaces. Currently, OSHA is in the process of revising its confined space standard, and MSHA will monitor that rulemaking closely.

Sections 58/72.401 through 58/72.450 Carcinogens

Existing metal-nonmetal standards in §§ 56/57.5001 and 56/57.5006 address exposure to 22 chemicals that MSHA considers to be carcinogens. Existing §§ 56/57.5001 incorporate by reference the 1973 ACGIH "TLV® Booklet" which lists 5 carcinogens with a TLV® and 12 carcinogens for which no TLV® has been assigned, but to which exposure must be controlled. Of those 17 carcinogens, MSHA further restricts the use of 11 of them at metal/nonmetal mines in existing §§ 56/57.5006. Sections 56/57.5006 list 16 chemicals (11 listed by ACGIH and 5 others) that cannot be used or stored except by competent persons under laboratory conditions approved by a nationally-recognized agency acceptable to the Secretary of Labor. Fourteen of these 16 "restricted use" chemicals were regulated by OSHA in 1974 as carcinogens. Through incorporations by reference of the ACGIH "TLV® Booklet," MSHA currently regulates exposure to 16 carcinogens at coal mines. At present, besides MSHA, the only Federal agencies that develop guidelines or regulations for carcinogen handling are NIOSH, OSHA, and the Environmental Protection Agency.

TABLE 13.—EXISTING METAL/NONMETAL RESTRICTED-USE CHEMICALS

2-Acetylaminofluorene
4-Aminodiphenyl
Benzidine
Carbon tetrachloride
bis(Chloromethyl) ether
3,3 Dichlorobenzidine
4-Dimethylaminobenzene*
Ethylenimine

TABLE 13.—EXISTING METAL/NONMETAL RESTRICTED-USE CHEMICALS—Continued

Methyl-chloromethyl ether
4,4'-Methylene bis(2-chloroaniline)
α1-Naphthylamine
β-Naphthylamine
4-Nitrobiphenyl
N-Nitrosodimethylamine
Phenol*
β-Propiolactone

*Not carcinogens

The metal/nonmetal preproposal draft listed 15 chemicals that could be used only under restricted conditions approved by MSHA. The Agency used evidence of carcinogenicity and knowledge of their presence on mining property in developing the list. The preproposal draft did not include procedures for use of these chemicals but operators were to have Agency approval for such use. Appeal procedures were also included. Many commenters supported the concept of restricted-use procedures for certain chemicals but objected to the approval process, stating that it was too burdensome and could create long delays. Some commenters stated that laboratory use of these chemicals by "competent persons" should be excluded from the standard.

For this proposal, MSHA reviewed the known or suspected carcinogens adopted by ACGIH in the 1989–90 "TLV® Booklet" and the documentation on which ACGIH based its decision to list the substances. Among other sources of information, MSHA reviewed the regulatory actions of OSHA and other Federal agencies, as well as the "Fourth Annual Report on carcinogens," prepared by the National Toxicology Program of the U.S. Public Health Service and issued by the Secretary of Health and Human Services. The majority of the chemicals listed by ACGIH are also listed in the "Fourth Annual Report on Carcinogens" or are regulated by other agencies as carcinogens.

TABLE 4.—SOURCES LISTING CARCINOGENS IN PROPOSED RULE

Listed by ACGIH:
Acrylamide
Acrylonitrile
4-Aminodiphenyl
Antimony trioxide production
Arsenic trioxide production
Asbestos
Benzene
Benzidine
Benzo(a)pyrine
Beryllium and compounds
1,3-Butadiene
Carbon tetrachloride
Chloroform
bis(Chloromethyl) ether
Chloromethyl methyl ether
Chromite ore processing (Chromate), as Cr
Chromium (VI) compounds, Cr (certain water insoluble)
Chrysene
Coal tar pitch volatiles, as benzene solubles
3,3'-Dichlorobenzidine
Dimethyl carbamoyl chloride
1,1-Dimethylhydrazine
Dimethyl sulfate
Ethyl acrylate
Ethylene dibromide
Ethylene oxide
Formaldehyde
Hexachlorobutadiene
Hexamethyl phosphoramide
Hydrazine
Lead chromate, as Cr
Methylene chloride
4,4'-Methylene bis(2-chloroaniline)
4,4'-Methylene dianiline
Methyl hydrazine
Methyl iodide
β-Naphthylamine
Nickel sulfide roasting, fume & dust, as Ni
4-Nitrodiphenyl
2-Nitropropane
N-Nitrosodimethylamine
N-Phenyl-β-naphthlyamine
Phenylhydrazine
Propane sultone
β-Propiolactone
Propylene imine
o-Toliudine
o-Toluidine
p-Toluidine
Vinyl bromide
Vinyl chloride
Vinyl cyclohexene dioxide
Xylidine
Zinc chromates

Regulated by OSHA as Carcinogens:
2-Acetylaminofluorene
Acrylamide*
Acrylonitrile
4-Aminodiphenyl
Amitrole*
Arsenic, inorganic
Asbestos
Benzene
Beryllium and compounds
Carbon tetrachloride*
Chloroform*
bis(Chloromethyl) ether
Coal tar pitch volatiles
3,3'-Dichlorobenzidine
4-Dimethylaminoazobenzene
Dimethyl sulfate*
Ethylenimine
Ethylene dichloride*
Ethylene oxide
Formaldehyde
4,4'-Methylene bis(2-chloroaniline)
α-Naphthylamine
β-Naphthylamine
2-Nitropropane*
4-Nitrodiphenyl
Perchloroethylene*
o-Toluidine*
p-Toluidine*
Vinyl bromide*
Vinyl chloride
Vinyl cyclohexene dioxide*
*Carcinogenicity used to establish OSHA PEL; no separate standard.

Listed in the Fourth Annual Report on Carcinogens:
Acrylonitrile
4-Aminobiphenyl (4-Aminodiphenyl)
Arsenic, certain compounds (Arsenic trioxide)
Asbestos
Benzene
Benzidine
Benzo(a)pyrene
Beryllium and certain compounds
Carbon tetrachloride
Chloroform
bis(Chloromethyl) ether
Chromium, certain compounds
3,3'-Dichlorobenzidine
4-Dimethylaminobenzene
Dimethyl sulfate
Ethylene oxide
Formaldehyde
Hexamethyl phosphoramide
Hydrazine
4,4'-Methylene bis(2-chloroaniline)
4,4'-Methylene dianiline
Methyl iodide
2-Naphthylamine (β-Naphthylamine)
Nickel, certain nickel compounds (Nickel sulfide roasting)
2-Nitropropane
N-Nitrosodimethylamine
1,3-Propane sultone (Propane sultone)
β-Propiolactone
o-Toluidine
Vinyl chloride

MSHA is proposing additional requirements to control exposure to carcinogens beyond those required by §§ 58/72.100 because MSHA believes that carcinogens pose unique risks to exposed individuals. Although exposure to other toxic materials can result in death, as can cancer, the disease progress due to cancer has several significant, unique features that increase the hazard to exposed individuals.

Carcinogens alter the target cell's genome which causes the cancer cell to proliferate rapidly and invade healthy tissue. Although the cancer starts with a single cell, during the course of the disease the cancer grows to contain millions of cells. This constantly-increasing number of cells may localize in one area or spread throughout the body. All of the cancer cells must be removed or destroyed to cure the cancer or the number of cells significantly reduced to cause remission. On the other hand, a toxic material may destroy or injure a target cell, but the amount of injury is dependent upon the amount of toxin and not upon cell proliferation.

Typically, there is a long latency period between exposure to a carcinogenic chemical and the development of cancer. This latency period allows time for detection and intervention of the disease process.

However, it also allows for exposure to other chemicals that may act as promoters or activators in the carcinogenic process. These exposures can increase the risk to the individual exposed to the carcinogen.

However, MSHA is aware that other chemicals pose life-threatening health risks that are as great as or greater than carcinogens and that some of these may be of more concern in mining. MSHA specifically solicits comments as to whether separate precautions should be required for chemicals that potentially cause cancer as opposed to chemicals that pose other potentially life-threatening risks.

The Agency is proposing a tiered approach to the regulation of these chemicals. The proposed standard delineates four classes of known or suspected carcinogens and separate provisions for asbestos construction work. One class would require MSHA approval prior to their use. The other three classes would have different requirements. MSHA is proposing separate provisions for asbestos construction work because the conditions of exposure and the necessary work practices to control that type of exposure are unique.

The tiered approach groups the carcinogenic chemicals and processes involving carcinogens according to their strength and toxicity, sources and potential routes of exposure. MSHA is proposing what it believes to be the necessary work practices for safely working with each class of carcinogens established by the tiering.

Class 1 carcinogens, addressed in §§ 58/72.401, are those that are brought onto mining property that have no assigned safe limit by any recognized agency, with one exception: bis(chloromethyl) ether. Chloromethyl methyl ether and bis(chloromethyl) ether are generally found simultaneously because bis(chloromethyl) ether often is produced as a by-product of chloromethyl methyl ether use. Therefore MSHA proposes to regulate both chemicals as class 1 carcinogens. Under the proposal, class 1 carcinogens would have to be controlled so that the miner would have virtually no contact with the carcinogen. Eleven of these carcinogens, including bis(chloromethyl) ether, are regulated by OSHA so that employees have no contact with the chemical. Along with other provisions, OSHA requires that employees be protected with the use of a closed isolated system that prevents exposure. Since these chemicals are likely to be used in procedures and operations other than those encountered in general industry, MSHA proposes to require prior approval for their use, rather than identifying specific control technology. This approach would allow flexibility to address new technology particular to mining while at the same time ensuring that the miner would have virtually no contact with the chemical. MSHA anticipates that there will be few operations that will choose to use these carcinogens over other alternative chemicals.

Class 2 and class 3 carcinogens are carcinogens brought onto mining property and which have been assigned PELs. Exposures to these carcinogens are controlled by their assigned PELs and additional requirements specified for each class. In addition, the other provisions of the proposed rule such as exposure monitoring, dangerous atmospheres, and respiratory protection would apply as appropriate.

The class 2 carcinogens addressed in §§ 58/72.402 consist of four chemicals that are currently regulated in metal/nonmetal §§ 56/57.5006: ethylenimine, β-propiolactone, carbon tetrachloride, 4-4′-methylene bis(2-chloroaniline), and one other chemical, vinyl chloride. As mentioned, under the existing MSHA standard the chemicals cannot be used or stored except by competent persons under laboratory conditions approved by a nationally-recognized agency. Under OSHA standards, no employee contact is allowed for ethylenimine and β-propiolactone. Under OSHA, this must be achieved primarily through the use of isolated systems, closed systems, and laboratory-type hoods, as well as restricted areas. For vinyl chloride, exposure is controlled through the use of PEL as well as establishment of restricted areas. Although process requirements are not specified, the OSHA standard does not allow any direct contact with liquid vinyl chloride. MSHA believes that similar engineering controls and restricted areas are necessary to control exposures to class 2 carcinogens in mines. MSHA's proposal specifies engineering and work practices to ensure that all routes of exposure would be controlled tightly. Since there is an exposure limit that can be used to determine the effectiveness of engineering controls for airborne exposure, MSHA does not believe it is necessary to require prior approval for the use of these chemcials.

Class 3 carcinogens addressed in §§ 58/72.403 are those that would be regulated to the PEL without specifying the technology required for their handling. If an overexposure is found, a restricted area would have to be established and additional work practices to control exposure would have to be implemented. This approach is consistent with the approach OSHA has taken for benzene, ethylene oxide, and formaldehyde. The proposal also includes requirements for labeling, monitoring and training, which are not dependent upon establishment of a restricted area. MSHA has included perchloroethylene and amitrole in this class based on the findings in the OSHA PEL rulemaking that these substances may increase the risk of cancer among exposed workers.

The class 4 carcinogens in §§ 58/72.404 are carcinogens that are mining processes, chemical processes, or chemicals for which the contribution of individual components toward the carcinogenic activity are not fully understood. The nature of the processes involved, as well as the type of exposure, requires different work practices than for the other classes of carcinogens.

Asbestos mining and milling, vermiculite mining and milling containing 1 percent asbestos in the ore or concentrate, and beryllium and cadmium (excluding welding) are all mining operations. Exposure to the carcinogenic material can occur from the initial recovery of the ore through the processing until bagging or shipping of the final product. Because the carcinogenic material is being recovered from the environment, there would be no area of the mine where contact with the carcinogen is not possible. Exposure could result from airborne dust, resuspension of dust from clothes, equipment, facilities, and ingestion of material from contaminated skin, food, and liquids. In addition, especially in regard to asbestos, the risk can spread to the employee's family if contaminated material is brought home.

Antimony trioxide production, arsenic trioxide production, chromite ore processing, and nickle sulfide roasting are processes that would not involve the entire mine but would involve a large part, if not all, of the milling process. The carcinogenic activity is associated with processes rather than a unique chemical form of the carcinogen.

MSHA has separated the class 4 carcinogens to require specific work practices that address the risks of mining and milling these carcinogens. MSHA specially solicits comments on this approach as well as on other approaches that may address the hazards posed.

The chemicals addressed in the proposed carcinogen standards are all substances listed in the 1988–89 ACGIH "TLV® Booklet" as known or suspected human carcinogens or have been

regulated by MSHA and OSHA as carcinogens. The ACGIH documentation demonstrates that the substances have proven carcinogenic to humans or have induced cancer in animals under appropriate experimental conditions. The February 1985 policy statement of the Office of Science and Technology Policy established the following principles to be used by regulatory agencies in assessing cancer risks from chemicals:

> Decisions on the carcinogenicity of chemicals in humans should be based on considerations of relevant data, whether they are indicative of a positive or negative response, and should use sound biological and statistical principles. This weight of evidence approach should include consideration of all relevant factors and should give appropriate weight to each on a case by case basis * * *. Examples of the types of information that should be taken into account include:
>
> (a) Findings from long-term animal studies * * *;
>
> (b) Results from epidemiological studies * * *;
>
> (c) Results from *in vivo* and *in vitro* short term tests * * *;
>
> (d) Data from studies of mechanism, including factors such as structure-activity relationships, and known similarities and differences in metabolic and kinetic profiles for different species (50 FR 10378) * * *.

The proposed rule would cover the use of these chemicals in all situations, including use by competent persons in laboratories, as required by the existing standard. Workers in laboratories are exposed to these chemicals and face the same health risk as other exposed miners. Accidents and overexposures to chemicals have occurred in mine laboratories, resulting in both injuries and poisonings. This history of laboratory hazards is by no means unique to mining. Current industrial hygiene literature reports many instances of laboratory accidents. In some cases, these laboratory accidents have been included in the ACGIH documentation of the TLVs®. For these reasons, MSHA believes that the hazards of laboratory use of such chemicals should be regulated. However, the Agency believes that in many cases the current methods for laboratory use of these carcinogens would need only slight modification in order to meet the proposed standards for use.

Exposure to carcinogens must be controlled as any other substance listed in the PEL Table. If overexposures occur or can be anticipated, then exposure monitoring, feasible engineering controls, and respiratory protection would have to be implemented. However, worker rotation would not be allowed to meet the PEL.

Two chemicals currently regulated at metal/nonmetal mines as restricted-use chemicals, phenol and 4-dimethylaminobenzene, do not appear in this proposed carcinogen standard. MSHA would, however, regulate them at all mines according to their permissible exposure limits in the PEL Table and other applicable standards in the proposed rule. Phenol has never been shown by scientific data to be carcinogenic and was evidently included in the existing restricted-use standard primarily due to its PEL. The hazards posed to miners by phenol would be adequately addressed by the other standards in this proposal. The chemical "4-dimethylaminobenzene" is spelled incorrectly. Dimethylaminobenzene, commonly called xylidine, is not chemically written with the prefix "4" and it is not listed currently by ACGIH as a carcinogen. However, 4-dimethyl-amino*azo*benzene is a suspected human carcinogen, which is regulated by OSHA. The omission of the letters "azo" caused the confusion.

Sections 58/72.401 Class 1 Carcinogens

Proposed §§ 58/72.401 address carcinogens that present the greatest potential risk to workers involved in their use since there are no PELs to determine environmental exposures at which there would be no expected increase in cancer or mortality. These chemicals are also brought onto mining property. These are termed "class 1 carcinogens" in the proposal. With the exception of bis(chloromethyl) ether, these carcinogens have no specified TLV®, since ACGIH has been unable to determine a safe exposure limit. As mentioned, bis(chloromethyl) ether is generally found as a by-product of chloromethyl methyl ether use. Three other chemicals currently regulated by MSHA as restricted-use chemicals at metal/nonmetal mines are not addressed by ACGIH but are regulated by OSHA as carcinogens. These chemicals are α-naphthylamine, 2-acetylaminofluorene, and 4-dimethylaminoazobenzene. The "Fourth Annual Report on Carcinogens" also lists 2-acetylaminofluorene and 4-dimethylaminoazobenzene as carcinogens. MSHA proposes to continue regulating these chemicals, placing them with the class 1 carcinogens. This standard would require mine operators to have MSHA approval of their procedures prior to usage of these chemicals. Such procedures would have to specify the use of engineering controls, personal protection, and administrative measures that ensure virtually no contact with the chemicals. Administrative measures are not the same as administrative controls. Administrative measures are management efforts used to define work practices and to limit possible contamination. Administrative measures could include designating only one door as entry into the restricted area or only one path to move containers of carcinogens from the loading dock to the restricted area. Administrative controls (work rotation), on the other hand, reduce one individual's exposure by spreading the exposure among several workers. This would not be permitted for carcinogens. Although worker rotation may lower one individual's risk, it may place more individuals at risk or increase the risk of others. The term "virtually" is used to prevent the analytical problems encountered when measuring chemicals at extremely low concentrations, which are near the limits of detection and the sensitivity of analytical techniques. MSHA intends that exposure to these class 1 carcinogens be minimal. Because of the high risk posed by these chemicals and the unique situations where they would be used in mining, MSHA believes that MSHA approval would be necessary to allow flexibility for new mining technology while assuring adequate protection for the miners involved. MSHA recognizes that procedures may vary from operation to operation. However, the Agency expects equivalent protection to be provided to all workers involved in the use of these chemicals. Comments are requested on the approval procedures and their appropriateness for regulating class 1 carcinogens. In addition, the public is invited to comment on whether MSHA should allow the use of these substances on mining property.

Each class 1 carcinogen present in a concentration of greater than 0.1 percent by weight or volume would be subject to approved restricted-use procedures. The 0.1 percent threshold is consistent with general industrial hygiene practice. MSHA recognizes that benzo(a)pyrene and chrysene can be found as a constituent of diesel exhaust, and it is not the Agency's intent to regulate diesel exhaust under this standard. For this reason, only mixtures containing more than 0.1 percent commercially manufactured benzo(a)pyrene and chrysene would be addressed as class 1 carcinogens. Benzo(a)pyrene has been used as a laboratory reagent in mining. MSHA also recognizes that benzo(a)pyrene and chrysene may be found in coal tar pitch, but in this case

exposure would be controlled through regulating coal tar pitch volatiles as a class 4 carcinogen under § 58.404.

MSHA approval of proposed procedures would be based on the Agency's knowledge of the hazard from exposure to the chemical. However, as new evidence becomes available about the hazard, the Agency would reassess an approval. If additional safeguards would be needed to protect miners exposed to the chemical, MSHA would notify the mine operator of the need to revise the approved procedures. Failure to make needed modifications within a reasonable period of time would result in revocation of the approval. A revocation action or disapproval of proposed procedures could be appealed to the Assistant Secretary of the Mine Safety and Health Administration. Consistent with the concept of participation by all parties in achieving a safe and healthful workplace, the proposal provides that a copy of the MSHA-approved procedures be available at the mine site for inspection by MSHA and examination by miners and their representatives.

Sections 58/72.402 Class 2 Carcinogens

Proposed §§ 58/72.402 address class 2 carcinogens. As mentioned, class 2 carcinogens consist of four chemicals that are currently regulated in metal-nonmetal §§ 56/57.5006: ethylenimine, β-propiolactone, carbon tetrachloride, 4,4'-methylene bis(2-chloroaniline), and one other chemical, vinyl chloride. MSHA proposes to specify use of engineering and work practices to ensure that all routes of exposure would be tightly controlled. MSHA believes that the exposure limits for these carcinogens can be used to determine the effectiveness of the engineering controls for airborne exposure. For this reason, MSHA is not requiring prior approval for the use of these chemicals.

The existing metal/nonmetal standards contain a conflict concerning carbon tetrachloride in §§ 56/57.20005 which prohibit the use of carbon tetrachloride, while §§ 56/57.5006 allow its use by competent persons under laboratory conditions. Under the existing standards, the Agency's intention was to ban carbon tetrachloride's use as a fire extinguishing agent and a common solvent, while permitting its use under restricted conditions. Carbon tetrachloride is currently used under restricted conditions approved by MSHA in mine laboratories for specific analytical and metallurgical procedures. The metal/nonmetal preproposal draft listed carbon tetrachloride as a restricted-use chemical to be used under conditions or procedures approved by MSHA. One commenter felt that permitting its use as a restricted chemical would be less protective than the existing standards. MSHA disagrees since the existing standards allow the use of carbon tetrachloride under conditions similar to the proposed rule. For these reasons, MSHA proposes to delete §§ 56/57.20005 which prohibit the use of carbon tetrachloride entirely and require that carbon tetrachloride be addressed as a class 2 carcinogen.

Sections 58/72.402 would require that a restricted area be established for class 2 carcinogens and exposures would have to be controlled according to §§ 58/72.100 if the contaminant has a listed PEL. The restricted area would limit the number of people exposed and prevent untrained workers from contaminating themselves and others. MSHA solicits comments on what methods may be necessary to identify individuals entering a restricted area in the event of an accidental leak, spill, or contamination. One option would be to require that a work log be kept.

Paragraph (b) would require that restricted areas be posted with signs stating the nature of the hazard and the procedures to be followed when entering and leaving the restricted areas. MSHA intends that any signs used would be compatible with any sign and labelling requirements in the Agency's hazard communication standard which is currently under development.

In paragraph (c), MSHA proposes to ban the storage and use of food, beverages, tobacco products, chewing products, and cosmetics in the restricted area to prevent ingestion and absorption of the restricted chemical. These products could become contaminated by contact with contaminated surfaces, gloves, and storage areas.

The requirements of paragraphs (d), (e), and (f) would prevent spreading a contaminant to areas outside the restricted area as a result of the process, material handling, or maintenance. Contamination of unrestricted areas could cause accidental exposure to unprotected workers. Contamination of the restricted area should also be minimized to prevent any unnecessary exposure to individuals handling the restricted chemicals. Therefore, paragraph (g) would require that the restricted chemicals be processed or used in a system that minimizes entry of the contaminant into the air.

Because these chemicals can be ingested, absorbed, or react with the skin, paragraphs (h), (i), (j), and (k) would require protection against skin and body contact with the restricted chemical. Carbon tetrachloride and 4,4'-methylene bis(2-chloraniline) have a "skin" notation that indicates that absorption through the skin can contribute significantly to the total body burden. Handwashing and showering reduce the risk of ingestion, absorption, or prolonged skin interaction for the miner and other individuals who may come in contact with the miner. At coal mines, bathing facilities are already required under other standards. These facilities could be used to meet paragraph (k). In addition, proper disposal or decontamination of clothing would prevent contamination of other areas and eliminate possible exposure of other workers.

Paragraph (l) would require that written decontamination, disposal, and emergency procedures be developed and operational. Properly planned and implemented decontamination procedures would help ensure that contamination of equipment could be contained within the restricted areas. The use of proper decontamination for individuals would prevent injury and illness from unplanned exposure. The ability to implement emergency procedures when needed would enable employees to handle emergency situations and minimize unnecessary exposure or contamination. Proper disposal of contaminated clothing and equipment would prevent contamination of other areas, thereby preventing exposure to unprotected miners.

Paragraph (m) would require the operator to conduct appropriate monitoring at least every 12 months to evaluate the effectiveness of control and decontamination procedures. Without evaluation, controls could deteriorate and the risk to the miners could increase significantly. Effective decontamination procedures are critical to controlling exposures.

Paragraph (n) would require that persons authorized to enter the restricted area, or who are involved in maintenance on contaminated equipment, decontamination, disposal, or emergency response, be trained prior to assignment and once every 12 months on the risks of applicable substances, decontamination, disposal and emergency procedures to be used. Miners can assist in controlling their exposure to carcinogens when they are fully advised of the hazards and methods to minimize exposure. MSHA intends that the training in the health risks be compatible with those that may be required under the Agency's future hazard communication standard.

Sections 58/72.403 Class 3 Carcinogens

Sections 58/72.403 address class 3 carcinogens that would be regulated to the PEL without specifying the technology required for their handling. As mentioned, overexposures would necessitate the establishment of a restricted area and the implementation of additional work practices to control exposures.

Concentrations of the chemicals exceeding 0.1 percent would require implementation of restricted-use procedures. However, restricted-use procedures for benzene and lead chromates and zinc chromates would be required when these substances exceed 5 percent in a product of formulation (liquids, solids, or gases).

Benzene is found in gasoline in volumes up to 5 percent, and MSHA does not intend to regulate exposure to gasoline by this standard. Benzene exposure resulting from gasoline vapors would be regulated by limiting exposure to the PEL under §§ 58/72.100. Mining exposure to gasoline containing benzene is characterized by short duration, intermittent exposure to gasoline vapors. Variable concentrations of airborne benzene primarily occur when fueling vehicles. MSHA believes that this type of exposure does not warrant inclusion under the proposed carcinogen standard.

Lead and zinc chromates are used as paint pigments. However, MSHA does not intend to restrict the use of paint. Lead and zinc chromate exposure resulting from paint would be regulated by limiting exposure to the PELs under §§ 58/72.100. MSHA believes that the exposure characteristics typical in painting operations in mining do not warrant inclusion in the restricted-use chemical standard.

Paragraph (a) requires that whenever a PEL or STEL overexposure is found, or when such overexposures may be anticipated to be above the PEL or the STEL, the operator would have to establish a restricted area. This restricted area would limit the number of people exposed, clearly identify the hazard area, and ensure that corrective work practices are initiated.

Paragraph (b) would require that restricted areas be posted with signs stating the nature of the hazard and the procedures to be followed when entering or leaving the restricted area. MSHA intends that any signs used would be compatible with signs and labels required by MSHA's forthcoming hazard communication proposal.

In paragraph (c), MSHA proposes to ban the storage and use of food, beverages, tobacco products, chewing products, and cosmetics to prevent ingestion and absorption of the chemical in the restricted area and in any area where these items may come into direct contact with the chemical.

The requirements of paragraphs (d), (e), and (f) would prevent spreading a contaminant to areas outside the restricted area as a result of the process, material handling, or maintenance. Contamination of unrestricted areas could cause accidental exposure to unprotected workers. Contamination of the restricted area should also be minimized to prevent any unnecessary exposure to individuals handling the restricted chemicals.

For emergency control activities and where direct contact with the carcinogen is possible, paragraphs (g), (h), and (i) would require protection against skin and body contact with the restricted chemical. Seventeen of the 29 chemicals listed have a "skin" designation which indicates that absorption through the skin is a significant exposure route for the body dose. Handwashing and showering reduce the risk of ingestion, absorption, or prolonged skin interaction for the miner and other individuals who may come in contact with the miner. At coal mines, bathing facilities are already required under other standards. These facilities could be used to meet the showering requirements of paragraph (i).

MSHA recognizes that high airborne concentrations of contaminants that can be absorbed through the skin (as indicated by a skin notation in the PEL table) may contribute significantly to the body burden by the skin absorption route. The preamble of the "TLV Booklet" states that:

> Little quantitative data are available describing absorption of vapors and gases through the skin. The rate of absorption is a function of the concentration to which the skin is exposed.
>
> Substances having a skin notation and a low TLV may present a problem at high airborne concentrations, particularly if a significant area of the skin is exposed for a long period of time. Protection of the respirator tract, while the rest of the body surface is exposed to a high concentration, may present such a situation. [p. 7].

MSHA believes that skin contact by airborne vapors and gases is also of particular concern, given the potential effects. MSHA specifically solicits comments on the appropriateness of requiring special clothing and daily showers when individuals are exposed to carcinogens with a skin notation in the PEL table at levels above the permissible exposure limit. MSHA also requests comment on whether such clothing and showers are appropriate for exposure to any carcinogen above the PEL to reduce potential exposures through ingestion and resuspension of contaminants.

Paragraph (j) would require that written documentation, disposal, and emergency procedures be developed and operational. Properly planned and implemented documentation procedures would help ensure that contamination of equipment could be contained. The use of proper documentation for individuals would prevent injury and illness from unplanned exposure. The ability to implement emergency procedures when needed would enable employees to handle emergency situations and minimize unnecessary exposure or contamination. Proper disposal of contaminated clothing and equipment would prevent contamination of other areas, thereby preventing exposure to unprotected miners.

Paragraph (k) would require the operator to conduct appropriate monitoring at least every 12 months to evaluate the effectiveness of controls and decontamination procedures. Without evaluation, control could deteriorate and the risk to the miners could increase significantly. Effective decontamination procedures are critical to controlling exposures.

Paragraph (l) would require that persons authorized to enter the restricted area or who are involved in maintenance on contaminated equipment, decontamination, disposal or emergency response, be trained prior to assignment and every 12 months on the risks of the applicable substances, decontamination, disposal and emergency procedures to be used. Miners can assist in controlling their exposure to carcinogens when they are fully advised of the hazard and methods to minimize exposure. MSHA intends that this training be compatible with training that may be required under MSHA's future hazard communication standard.

Sections 58/72.404 Class 4 Carcinogens

Sections 58/72.404 address known carcinogens that involve mining processes, chemical processes, or substances for which the contribution of individual components toward the carcinogenic activity is not clearly understood. Asbestos mining and milling and vermiculite mining and milling where asbestos is greater than 0.1 percent in the ore or concentrate are included. Chemicals used in mixtures of gases, liquids, or solids in concentrations exceeding those in the table of class 4 carcinogens would

require implementation of these procedures. Because several of these processes are found only in metal/nonmetal mines, they do not appear on the class 4 carcinogen table for coal mines. By use of applicable PELs, the risks to individuals would be adequately controlled. Asbestos mining and milling and vermiculite mining and milling where asbestos is greater than 0.1 percent in the ore or concentrate involve mined commodities, and therefore no minimum percentage would be required. The carcinogenic potential of processes involving the manufacturing of chromite ore, nickel sulfide, arsenic and antimony trioxide is due to exposure from the process itself; therefore no minimum percentage of content is required.

Coal tar pitch would have to be present in a minimum concentration of 2 percent. The use of the 2 percent limit concentration would be the equivalent of a 0.1 percent limit on the polycyclic hydrocarbons contained in coal tar pitch volatiles. Many polycyclic hydrocarbons are carcinogens, and scientific evidence indicates that they may be responsible for the carcinogenic effects of coal tar pitch volatiles.

While beryllium and cadmium are used as agents in various metals commonly found in welding operations, it is not MSHA's intent to regulate welding processes by this carcinogen standard. MSHA believes that typical beryllium and cadmium exposures resulting from welding operations would be adequately controlled by enforcement of the beryllium and cadmium PELs under §§ 58/72.100.

Exposure of miners in arsenic trioxide production would be primarily controlled by § 58.404, but airborne exposure also would have to meet the limit for arsenic and soluble compounds in the PEL table. Similarly, antimony trioxide production would also have to meet the PEL for antimony trioxide.

MSHA has identified three types of asbestos exposure that occur in mining that warrant special requirements in addition to the feasible engineering controls, exposure monitoring, and respiratory protection requirements that apply whenever exposure exceeds the PEL or may be anticipated to exceed the PEL. Asbestos mining and milling and vermiculite mining and milling where asbestos exceeds 0.1 percent in the ore or concentrate are listed as class 4 carcinogens. Asbestos construction work would be regulated separately because of the nature of exposure and the type of work practices that are unique to that operation. The demolition and renovation of older facilities containing asbestos-insulated pipes and asbestos-containing material represent significant sources of exposures to miners at both coal and metal/nonmetal mines. These sources will continue to exist as long as older mine facilities are replaced or expanded.

MSHA believes that asbestos mining and milling and vermiculite mining and milling where asbestos exceeds 0.1 percent in the ore or concentrate represent a long-term risk of exposure to the miner because asbestos is a natural constituent of the ore. MSHA believes that the occurrence of asbestos in other commodities is sporadic in nature and does not represent a long-term risk to the miner. In addition, MSHA believes that the use of asbestos in underground coal mining applications could lead to only sporadic intermittent exposure. For example, asbestos continues to be used as a packing material to ensure the flame path integrity of specific types of cable entrances into explosion-proof electrical contactor enclosures on approved equipment. Other applications include use as gaskets in flame safety lamps. Control of these types of asbestos exposure to the PEL in such situations should provide adequate protection to the miners involved. MSHA specifically solicits comments on data regarding asbestos exposure and any additional provision necessary for these limited, intermittent exposures.

Paragraph (a) would restrict the access into contaminated areas to essential personnel. This would reduce the number of potentially exposed individuals and prevent untrained persons from contaminating themselves and others.

Paragraph (b) would require that restricted areas be posted with signs stating the nature of the hazard and the procedures to be followed when entering and leaving the restricted areas.

In paragraph (c), MSHA proposes to ban the storage and use of food, beverages, tobacco products, chewing products, and cosmetics in the restricted area to prevent ingestion and absorption of the restricted chemical. These products could become contaminated by contact with contaminated surfaces, gloves, and storage areas.

Because these chemicals can be ingested, absorbed, or react with the skin, paragraphs (d), (e), (f) and (g) would require protection against skin and body contact with the restricted chemical. In addition, proper disposal or decontamination of clothing would prevent contamination of other areas and eliminate possible exposure of unprotected workers.

Paragraph (h) requires that containers of class 4 carcinogens be clearly marked and their contents identified. MSHA intends that labels required by this standard would be consistent with labels required under any future hazard communication standard. This section would adequately warn miners of the potential hazard of the carcinogen and enable them to take proper action. However, MSHA recognizes that several of these carcinogens are processes involving ore. In these cases, paragraph (h) would not apply to materials contaminated by the carcinogen as is required for class 2 and class 3 carcinogens in §§ 58.402 and 58.403. Otherwise materials discarded from the mining process, such as tailings, would be included.

Paragraph (i) would require that written decontamination, disposal and emergency procedures be developed and operational. Properly planned and implemented decontamination and disposal procedures help assure that contamination of equipment and individuals could be contained within the restricted areas. The ability to quickly implement emergency procedures would enable employees to handle such situations and minimize unnecessary exposure or contamination.

Paragraph (j) would require that the operator conduct appropriate monitoring at least every 12 months to evaluate the effectiveness of control and decontamination procedures. Without evaluation, controls could deteriorate and the risk to the miners could increase significantly. It is also critical in controlling exposure that decontamination procedures continue to be effective.

Paragraph (k) would require that persons required to enter a restricted area or who are involved in decontamination, disposal, or emergency response be trained prior to initial assignment and at least annually on the risks of applicable substances, decontamination, disposal and emergency procedures to be used. Employees can assist in controlling their exposure to carcinogens when they are fully advised of the hazards and methods to minimize exposure. MSHA intends that the training on health risks be compatible with the requirements of the Agency's hazard communication standard, which is under development.

Section 58/72.405 Asbestos Construction Work

Asbestos construction work would be regulated under §§ 58/72.405 and be defined as construction work such as demolition or salvage of structures where asbestos is present; installation, removal, or encapsulation of asbestos and materials containing greater than

0.1 percent asbestos; spill and emergency cleanup of asbestos and material containing greater than 0.1 percent asbestos; transportation, disposal, storage or containment of asbestos or materials containing greater than 0.1 percent asbestos on the site or location at which construction activities are performed.

Paragraph (a) would require that operators designate a person to be responsible for the asbestos construction work who would have authority to take prompt corrective action to eliminate hazards. This person would have to have had comprehensive training on the hazards of asbestos and asbestos construction work, such as a course conducted by an EPA Asbestos Training Center, or be a certified industrial hygienist (C.I.H.) certified by the American Board of Industrial Hygiene, or be certified for asbestos construction work by a state program. This provision would ensure that a trained individual would be able to quickly correct any hazards. Asbestos construction work, unlike plant processes, usually is accomplished quickly, generally over a span of weeks. The exposure resulting from incorrectly handled and unrecognized hazards can be quite excessive. If the hazards are not quickly corrected, miners will be subject to exposures which will place them at increased risk.

Paragraph (b) would require that areas where asbestos construction work is being done be restricted to essential personnel. This would reduce the number of potentially exposed individuals and prevent untrained persons from contaminating themselves and others.

Paragraph (c) would require that the restricted area be posted with signs stating the nature of the hazard and the procedures to be followed when entering and leaving the restricted area.

MSHA proposes to ban the storage and use of food, beverages, tobacco products, chewing products and cosmetics in the restricted area in paragraph (d) to prevent ingestion of asbestos and other toxic material resulting from the construction work. These products could become contaminated by contact with contaminated surfaces, gloves, and storage areas.

Paragraphs (e), (f), and (g) would prevent exposure to asbestos through personal contamination. Proper disposal or decontamination of clothing would prevent contamination of other areas; regeneration of asbestos dust from the clothing, exposing the wearer; and elimínate possible exposure of unprotected workers.

Paragraph (h)(1) would require the mine operator to establish negative-pressure enclosures before beginning removal, demolition, or renovation operations, whenever feasible. This type of work generates large amounts of asbestos-contaminated dusts and materials. The use of negative-pressure enclosures is required to prevent contamination of non-restricted areas, thereby preventing exposure of unprotected persons.

Paragraph (h)(2) would allow the use of glove bags and wet methods instead of negative-pressure enclosures for small-scale, short-duration activities involving removal of asbestos-containing insulation on pipes, removal of entire and intact asbestos-insulated pipes or structures, and replacement of electrical conduits through or near asbestos-containing material. Under these circumstances, MSHA recognizes that currently available glove bags, in conjunction with wet methods, can prevent contamination in nonrestricted areas.

Paragraph (i) would require daily monitoring in the restricted area if the exposure exceeds the PEL or reasonably could be expected to exceed the PEL. This type of work generates large amounts of dust and debris, which can vary significantly as the work progresses. Daily monitoring is necessary to determine if the respiratory protection provided is adequate. When all workers within a restricted area are equipped with supplied-air respirators operated in the positive-pressure mode, daily monitoring would not be required because this type of respirator is adequate for all levels of exposure.

Paragraph (j) would require that written decontamination, disposal, and emergency procedures be developed and operational. Properly planned and implemented decontamination procedures would help ensure that contamination of equipment and individuals could be contained within the restricted areas. The ability to implement emergency procedures when needed would enable employees to handle emergency situations and minimize unnecessary exposure or contamination.

Paragraph (k) would require that persons authorized to enter the restricted area or who are involved in decontamination, disposal, or emergency response be trained prior to initial assignment and at least annually on the risks of applicable substances, decontamination and emergency procedures to be used. Miners can assist in controlling their exposure to carcinogens when they are fully advised of the hazards and methods to minimize exposure.

Paragraph (l) would require that MSHA be notified at least 20 days prior to commencement of asbestos construction work involving at least 80 linear meters (260 linear feet) of asbestos or asbestos-containing materials or at least 15 square meters (160 square feet) of asbestos or asbestos-containing materials. The provision parallels the mine operator's reporting requirements to the Environmental Protection Agency (EPA) under the National Emissions Standard for Hazardous Air Pollutants (NESHAPS), 40 CFR Part 61, Subpart M. MSHA does not intend that the notice be written. A telephone call to the local MSHA field or district office would satisfy this requirement. Because asbestos construction activities may be done quickly before MSHA's next regular inspection, this reporting requirement would enable MSHA to ensure proper compliance with the regulation as well as allow time for MSHA to provide suitable personal protection for the MSHA inspector who might become involved.

Paragraph (m) would require that containers of asbestos and materials containing greater than 0.1 percent asbestos be stored in a manner that prevents contamination of restricted and nonrestricted areas. Asbestos construction work typically generates large amounts of asbestos waste material. Through proper labeling, miners would be able to recognize the necessary procedures to follow to prevent exposure or contamination. Proper storage would prevent contamination of restricted and nonrestricted areas, thereby decreasing the risk of exposure to miners. Not all areas of a restricted area are contaminated or have the same level of contamination. Controlling contamination inside the restricted area provides protection through use of protective equipment and procedures. Preventing contamination outside the restricted area eliminates exposure of unprotected miners. The labels would be consistent with those required under any hazard communication standard developed by MSHA.

Paragraph (n) would require that equipment, material, or other items introduced or removed from the restricted areas not contaminate a nonrestricted area. Asbestos construction work typically requires the movement of large volumes of equipment to and from the restricted area. This provision would prevent contamination of other areas and

eliminate the exposure of unprotected miners.

Sections 58/72.450 Medical Surveillance Program

These sections would require operators to establish a written medical surveillance program that would offer miners who are or will be working with substances or processes listed in Table C–5 the option to be examined by a licensed physician. The medical examination would have to be conducted at a reasonable time and place. As required by the Mine Act, all costs of the medical examination, including the miner's time, would be paid by the mine operator. Section 101(a)(7) of the Mine Act provides in part, that:

* * * [W]here appropriate, any such [health or safety] mandatory standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the operator at his cost, to miners exposed to such hazards in order to most effectively determine whether the health of such miners is adversely affected by such exposure. Where appropriate, the mandatory standard shall provide that where a determination is made that a miner may suffer material impairment of health or functional capacity by reason of exposure to the hazard covered by such mandatory standard, that miner shall be removed from such exposure and reassigned. Any miner transferred as a result of such exposure shall continue to receive compensation for such work at no less than the regular rate of pay for miners in the classification such miner held immediately prior to his transfer. In the event of the transfer of a miner pursuant to the preceding sentence, increases in wages of the transferred miner shall be based upon the new work classification.

The legislative history of the Mine Act states that the Secretary should:

* * * [I]nclude in health standards, where appropriate, the requirement that miners be given periodic medical examinations. The [Senate] Committee intends that mine operator must bear the cost of providing such medical examinations or tests. Such medical examinations are intended to be for the benefit of miners, and are for the purpose of both testing the adequacy of the standard and testing whether the miner has been subjected to material impairment of health or functional capacity as a result of exposure to the substance or hazard. As such, the medical examinations are a key aspect of the health standards. To encourage miners to take such medical examinations, this section requires the Secretary to issue appropriate standards requiring that miners who, as a result of these examinations, are determined to have suffered material impairment of health or functional capacity as a result of exposures be reassigned to positions where they will not be so exposed; and they continue to receive compensation at no less than the regular rate for miners in the classification such miner held immediately prior to transfer. This "regular rate" is to include any subsequent salary increase received by miners in the classification such miners held immediately prior to transfer. These requirements would be enforced through the issuance of appropriate citations, orders and penalties under sections 105 and 106 [sections 104 and 105]. In addition, under section 106(c) [section 105(c)], it would be unlawful for an operator to discriminate against a miner who is the subject of medical examination and potential transfer under the provisions of a standard issued under this section. S. Rep. No. 95–181, 95th Cong., 1st Sess. 22–23 (1977).

MSHA believes that routine medical examinations may result in early detection and prevention of the development of serious or fatal illnesses for the carcinogens listed in Table C–5. The major goal of medical monitoring is to detect any evidence of biological change that suggests a premalignant phase or to detect a preclinical neoplasm in a stage at which appropriate therapy may decrease morbidity and mortality. While recognizing that medical surveillance may not change the final outcome in every case of cancer, MSHA believes that early detection could also provide increased longevity because of treatments resulting in temporary remission or delayed progression of disease.

Cancer treatment can involve surgery, radiation, and chemotherapy—either individually or in combination. Recent advances in chemotherapy have resulted in increased survival times as well as increased cures in a large variety of tumor types (refs. 53, 54, and 56). New drugs involving immunotherapy, such as interleukin–2, have been successfully used in curing some advanced cancer cases (ref. 55). Medical surveillance is necessary, because early detection increases the effectiveness of cancer treatment (refs. 54 and 56). Larger, bulkier tumors are less likely to be penetrated by chemotherapy agents than smaller tumors (ref. 56). In addition, intensive polychemotherapy alone or in combination with other treatments is more effective in patients with low tumor loads (ref. 56).

Table C–5 in §§ 58/72.450 represents MSHA's selection of carcinogens for which the Agency believes early detection of health problems would have some benefit, either in terms of longevity or outcome. The carcinogens listed in Table C–5 also have medical-surveillance requirements under OSHA. MSHA requests comment on the appropriateness of medical surveillance for the other carcinogens listed in this proposed standard. Issues that should be addressed include evidence of biological precursors for cancer caused by such chemicals, the specificity and accuracy of tests available for these precursors, the timing of the precursors following exposure, and the implications of any latency period for the timing of follow-up medical testing. MSHA is interested in situations where cancer screening has been beneficial and situations where it has not. Additionally, commenters should provide information and supporting data on the feasibility of expanding the scope of the provisions on medical surveillance and medical transfer to other chemicals such as lead, mercury, cadmium, and arsenic and the health benefits that would be obtained.

A medical examination by a licensed physician would have to be made available to a miner: (1) Before the miner could be assigned to work within a carcinogen on Table C–5, (2) once every 12 months, and (3) whenever the miner is exposed to these carcinogens as a result of an emergency.

MSHA recognizes that other agencies have recommended or required medical surveillance and linked its availability and frequency to criteria such as number of days per year, different exposure levels, age, contact with the chemical, and duration of employment. MSHA specifically requests comment on the appropriate criteria to be used when offering medical examinations to miners.

The operator would have to direct the examining physician to transmit examination results to the operator. In order to protect miners' medical records that are irrelevant for the medical examination required under this section, MSHA intends that the mine operator receive only information relevant to the miner's exposure to carcinogens on Table C–5. The operator would have to provide the examining physician with relevant job information in the operator's possession. All medical records would have to be retained by the operator for a period of the miner's employment plus 30 years. This is consistent with OSHA's record retention period for carcinogens. Miners, their designated representatives, and authorized representatives of the Secretary of Labor and the Secretary of Health and Human Services would have access to miners' medical records. In addition, operators would have to give miners copies of their medical records upon termination of employment.

Whenever an operator ceases to do business and there is a successor operator, the successor operator would have to continue to retain the medical records for the required period of this section. Where there is no successor

operator, the mine operator would have to notify affected miners of their rights of access to records within 3 months prior to destroying such records.

Under the proposal, the mine operator would have to notify MSHA in writing of any miner requesting to transfer as a result of the physician's medical report indicating that the miner has developed cancer or any impairment of health or functional capacity due to exposure to a carcinogen listed in Table C–5. The notice would have to be sent to MSHA within 15 calendar days of receipt of the miner's request for transfer and include the miner's occupation, new assignment, and the date of transfer. The transfer would have to take place before the 21st calendar day following receipt by the operator of the miner's request.

The proposal would include statutory requirements regarding compensation protection for transferred miners. The miner would retain at least the previous hourly rate of pay and subsequently would receive actual increases applicable to the assigned work classification. For example, if a transferred miner previously had a $10.00 per hour job and is transferred to an $8.00 per hour job, the operator must continue to pay that miner at least $10.00 per hour. If the rate of pay at the new position is increased to $9.00 per hour, the operator must pay the transferred miner $11.00 per hour to protect the miner from loss in wages.

The Agency realizes that these provisions are not as detailed as medical surveillance and transfer rights under 30 CFR Part 90. However, the number of miners potentially affected by this provision would be very limited. MSHA requests comment on whether medical examinations and transfer under this section should be at each miner's option as in this proposal, or mandatory.

Sections 58/72.500 Respiratory Protection Program

Existing §§ 56/57.5005(b) requires metal/nonmetal operators to establish a respiratory protection program consistent with the American National Standards Institute "Practices for Respiratory Protection," ANSI Z88.2–1969, whenever respiratory protection is required. This ANSI document is incorporated by reference. The standard sets accepted practices for respirator users and provides information and guidance on the proper selection, use, and care of respirators.

In the metal/nonmetal preproposal draft, MSHA recommended deleting the incorporation by reference and including specific requirements in the standard, based on the latest edition of the ANSI standard, Z88.2–1980. The proposed rule would eliminate this incorporation by reference in the same manner.

When respirator use is required by an MSHA standard that relates to an exposure limit, including radiation protection, proposed §§ 58/72.500 would require operators to establish a respiratory protection program. In addition, MSHA proposes to revise existing coal § 70.300 to reference the proposed respiratory protection provisions. As a result, coal mine operators would be required to implement a respiratory protection program when respirators are required by any coal standard. Existing § 70.300 would be recodified as § 70.302, and similar wording would be included in parts 71 and 90 as § 71.302 and § 90.302. These three standards would strengthen the existing provisions concerning respiratory protection and further protect miners against hazardous levels of respirable coal dust. Changes concerning the referencing of respiratory equipment approvals under 30 CFR Part 11 would be made, and the Secretarial references would be deleted. MSHA would require respiratory equipment to be used, rather than merely provided, where exposures to excessive dust occur. Use of such equipment would also have to meet the requirements of proposed §§ 72.500. Existing §§ 70.300–1, 70.305, and 70.305–1 also would be replaced by proposed § 72.500.

In the proposed rule, MSHA has retained the principal requirements of the existing standard for metal/nonmetal mines by extracing the relevant portions of ANSI Z88.2–1980. The proposal contains requirements for selection, fit testing, use, maintenance and training. Mine operators would have flexibility to use methods for compliance that are best suited for their particular operators, provided that the basic requirements of the standard are met. The standard would not apply to voluntary use of respiratory protection, mine rescue team use which is covered by 30 CFR part 49, or self-rescuers designed for escape purposes covered by existing §§ 57.15030 and 75.1714.

Several commenters suggested that a more performance-oriented standard would allow development of a cost-effective respirator program and lessen the likelihood that the standard would become outdated by new technology. MSHA agrees that performance requirements for respiratory protection programs could allow a more rapid introduction of new technology into the workplace, creating a safer work environment and accommodating a greater variety of working conditions. Accordingly, the proposed standard identifies the minimum elements of an acceptable respiratory protection program. The written standard operating procedures (SOP) for an operation must describe how compliance is achieved for each required element. Standard operating procedures are required currently. The content of the standard operating procedures is dependent upon the respiratory protection needs of the mine and the type of respiratory protection used. Several commenters stated that SOPs need not be a summary of technological specification but should be tailored to responsibilities and types of respirators required for specific jobs. Other commenters stated that SOPs should address administration, respirator selection, training, fitting, issuance, maintenance, inspection, workplace surveillance, program evaluation, and approved or accepted equipment. MSHA believes that standard operating procedures addressing the proposed minimum elements would be sufficient.

Several commenters suggested that all persons who wear respirators should be covered by the respiratory protection program and not just those who would be required to wear respirators by MSHA standards. Repirators are frequently worn voluntarily by miners working in areas that meet the permissible exposure levels for airborne contaminants. These persons wear respirators for additional personal protection. While the Agency would encourage such wearers to continue to follow a respiratory protection program, MSHA does not intend for this standard to apply to voluntary use of respirators.

Paragraph (a) of the proposed standard would require that operators provide respirators approved under 30 CFR part 11 and that they be maintained in approved conditions. This would clarify what is meant by the existing requirement for "MSHA-approved respirators." Several commenters suggested that "approved or accepted by MSHA or NIOSH" would allow for the use of effective respirators for which no approval requirements currently exist. MSHA and NIOSH recognize the need for updating and improving portions of 30 CFR part 11, and NIOSH has proposed updated respirator approval standards on August 27, 1987 (52 FR 32402). MSHA is monitoring that rulemaking closely and will revise this rule as appropriate. However, MSHA believes that only those devices certified as approved by NIOSH should be permitted so that the effectiveness of the devices meet uniform test requirements and specifications. One commenter objected to the cross

reference of 30 CFR part 11 and requested that part 11 requirements be included in the proposed standards. The part 11 provisions are provided for manufacturers or designers of respiratory devices who seek approval for a design model or product for a specific classification or application. The mine operator has no responsibility for filing applications for approval or testing respiratory devices; however the operator must provide approved respirators for use.

A few commenters requested that MSHA permit modifications that do not adversely affect respirator performance, including allowing the interchange of respirator parts from different manufacturers, except on self-contained breathing apparatus (SCBA). MSHA believes that any modifications to an approved respirator would negate that approval if the modification has not been tested and approved under 30 CFR part 11.

Paragraph (b) would require respirators to be selected according to the criteria in three tables in §§ 58/72.-500, the manufacturer's limitations on the respirator, and the characteristics of the work environment, which includes the exposure levels, the period of time the respiratory protection will be worn, and the work activities of the employees. These tables indicate whether a respirator is permitted for use in oxygen-deficient atmospheres or in IDLH atmospheres, what maximum protection factors are, and what additional precautions must be taken when using certain respirators. The respirator protection factors in the tables would have to be used in conjunction with the manufacturer's limitations on the respirator to determine the concentrations of harmful atmospheres in which the respirator can be used. To determine the maximum concentration of the substance for a particular respirator application, the operator must use the manufacturer's limitations on the respirator, the respirator wearer's own protection factor as determined by quantitative fit testing, or the respiratory protection factor in the table, whichever is more stringent. Manufacturers place limitations on the filters, cartridges, and canisters used in air purifying respirators. If, for example, a manufacturer places a limitation on a particular cartridge or canister and the quantitative fit test indicates a protection factor of 100, that cartridge or canister could not be used in concentrations greater than the manufacturer's limitation. Several factors, including type and quantity of the sorbent, the toxic contaminant involved, and the concentration of the contaminant, can affect the service life of an air-purfying respirator. As a result, a manufacturer may place a more stringent limitation on a respirator cartridge than would be indicated by facepiece fit tests. These limitations are those of filters, cartridges, and canisters used in air-purifying respirators.

The tables in the proposed rule are much simpler than in the metal/nonmetal preproposal draft. The tables list the maximum assigned protection factor for the various respriators, as well as the basic minimum limiting criteria for use. MSHA believes that these new tables present selection criteria to the operator in a more understandable form.

Scientific data have shown that protection factors determined under laboratory conditions overestimate greatly the protection offered by respirators in the actual working environment. This may be due to many factors, including the following. Laboratory exercises do not mimic all the body movements done by workers in the actual workplace, nor do they match all the environmental conditions to which miners are exposed at work. The individual pulmonary characteristics of persons under various types of work loads also can cause variations in the protection factors. Fit testing of a respirator wearer only lasts a few minutes, but generally workers who wear required respiratory protection wear respirators for much longer periods of time. The testing methodology itself, such as the placement of a probe in a facepiece for quantitative testing, may affect the protection factors.

Because of the extensive data indicating the importance of these elements, MSHA has assigned maximum-use protection factors for the various types of respirators used in the mining environment. Operators by their choice of fit-testing methods may select the type of respiratory protection up to the maximum protection factors. However, MSHA believes that the majority of respiratory protection wearers will only need protection factors of 10. There will be a limited number of circumstances where protection factors greater than 10 would be needed. In these situations, the nature of the hazard is such that it is important that the person exposed is assigned respiratory protection that will provide the required protection under actual work conditions.

MSHA believes that closed-circuit self-contained breathing apparatus approved for mine rescue under 30 CFR part 11 would provide adequate protection for miners when used for IDLH and oxygen-deficient atmospheres, based on the Agency's experience with these apparatus. However, the Agency requests information of any situations where the higher protection factor would be inappropriate.

The selection table in the metal/nonmetal preproposal draft would have prevented the use of negative-pressure, closed-circuit self-contained breathing apparatus approved for mine rescue in oxygen-deficient and IDLH atmospheres. These respirators are currently used for mine rescue and recovery under 30 CFR part 49. Based on the Agency's experience with these types of apparatus, MSHA believes that they are appropriate for use in the hazardous atmospheres addressed by these standards and has included them in the respirator selection table.

To determine whether respirators remain in proper operating condition, paragraph (c) would require their inspection prior to use and after cleaning, sanitizing, and maintenance, including repair. Emergency-use respirators would have to be inspected monthly, with a record kept of the last inspection. These requirements do not differ for the existing standard for metal/nonmetal mines. Proper care and maintenance of respirators is an essential component of any respiratory protection program to prevent failure due to undetected or unrepaired defects or damage. Maintenance of supplied-air or self-contained breathing apparatus should include recharging cylinders, replacing chemical canisters, and checking integral components such as filters. If disposable-type respirators are damaged or defective, they would have to be replaced. These inspection requirements are derived from ANSI Z88.2–1980. However, the proposed rule would not require inspection of respirators after use. Inspection of respirators should detect any damage that must be repaired prior to reuse of the respirator. One commenter suggested that an inspection should be performed before cleaning and sanitizing. MSHA believes that this is unnecessary because any damage to a respirator that occurred prior to or during cleaning and sanitizing should be detected during the inspection when the respirator is reassembled.

The purpose of the proposed inspection after maintenance or cleaning and sanitizing is detection of damage or defects occurring in respirator units during these processes. Inspection prior to use provides a second, more cursory check to determine whether damage or

contamination has been sustained during storage. The wearer would be the most likely person to inspect the respirator prior to use. MSHA intends this pre-use inspection to be a visual one in order to check for proper assembly and obvious damage or defects. This inspection should include checking to see that cartridges or canisters are inserted correctly, facepiece seals are not cracked or deteriorated, valves are present and functional, and all connections are tight. Because cleaning, sanitizing, and maintenance may involve dissassembly of the respirator, a more detailed inspection is needed. These inspections must be done by the person performing the tasks involved. During tasks that involve disassembly of a unit, it is important to inspect the reassembled parts for those that may be attached incorrectly, or only partially reattached. Inspection of the assembly of parts, as well as the parts themselves, is essential for maintaining respirators in proper operating condition. For example, use of an approved replacement valve for repairs is negated if the value is not seated correctly. Also, cross-threaded cartridges or canisters could render a respirator useless. Another problem that can occur in tasks involving disassembly is use of a wrong part, which may not work effectively. Many component parts, especially those for the same type of respirator, appear to be similar. When handling multiple models of respirators, it is essential to inspect the respirator to see that correct replacement parts have been used.

Monthly inspections of emergency-use respirators are critical to ensure the miner protection in the event of an accident. If this type of respiratory protection is not available and ready at all times, the miner cannot be guaranteed protection since there will be no time to correct and repair the equipment at the time of the emergency. A record of the latest inspection will enable the operator to determine when the equipment will need to be inspected again. This requirement represents no change from the existing standards for metal/nonmetal mines. The record is generally a tag placed on the equipment which has the date of inspection, the status of the equipment (pass/fail, ok, etc.), and the initials of the person conducting the inspection.

One commenter stated that MSHA should make it clear that the mine operator must do the cleaning, sanitizing, inspection, repair, and storage of respirators. Another commenter suggested the MSHA permit mine operators to issue respirators to the wearers and to have the wearers be responsible for the maintenance of their own respiratory protective equipment. The mine operator is ultimately responsible for administrative management of the respiratory protection program. However, the proposed rule would not prohibit the operator from delegating specific duties to trained miners or contracted services, as long as the requirements of the standard are met.

The preproposal draft included a provision for maintenance to be performed according to a schedule. Several commenters stated that this was too restrictive and could conflict with some maintenance programs under the existing provisions where wearers maintain their own respirators. MSHA agrees that scheduled maintenance is unnecessary if the proposed inspections are properly conducted and the respirators are maintained in approved condition.

Paragraph (d) would require that respirator wearers be supplied with a clean and sanitized respirator each day and that a respirator worn by one person be cleaned and sanitized before use by another person. The proposed rule would require emergency-use respirators to be cleaned and sanitized promptly after each use. This requirement has several purposes. Malfunction of a respirator can be caused by the interference of dirt or other contamination with internal working parts. This allows leakage and could result in exposure to a hazardous or IDLH atmosphere. Contamination on the facepiece can also allow leakage and exposure. Skin irritation or dermatitis can be caused by chemical contamination or soiling of a respirator facepiece. Use of unclear respirators can also lead to transfer of diseases or illness between wearers. Discomfort to the respirator wearer caused by contamination of the respirator may lead to the respirator's not being used. Respirators can be sanitized with a simple water and chlorine solution.

Emergency-use equipment must be ready to perform when needed. This type of respirator is usually provided for use in potentially dangerous atmospheres and must be maintained promptly and properly after each use, including cleaning and sanitizing, to ensure that it is effective when needed. The failure of this type of respirator, due to internal contamination, could compound the severity of an emergency situation by causing additional injury or death.

Several commenters stated that the language in the preproposal draft requiring that clean and sanitized respirators be provided "before each use" would require the mine operator to issue intermittent users a clean and sanitized respirator at the beginning of each intermittent wearing period. This, they stated, would be unnecessarily expensive and restrictive. Several commenters suggested wording similar to "respirators shall be cleaned often enough to remove contamination and maintain the function of the respirator." MSHA recognizes that intermittent respirator wearers are frequently in and out of mandatory respirator areas and that the supplied respirators may be used numerous times during a work shift. When this occurs throughout a full shift, respirators become dirty and contaminated from normal use and handling by the end of the shift. Therefore MSHA has proposed that clean and sanitized respirators be supplied each day, allowing the flexibility necessary for intermittent users. Daily issuance of clean and sanitized respirators is a reasonable schedule that would provide for needed maintenance. Disposable-type respirators that cannot be cleaned and sanitized would have to be replaced.

One commenter recommended a provision that would allow the operator an option of cleaning and sanitizing respirators after use by providing the facilities for the wearer to carry out this requirement. The proposed language would accommodate this option as well as other alternatives such as use of disposable-type respirators.

Paragraph (e) would require that respirators be stored in a manner that protects them from damage or contamination and that emergency-use respirators be accessible to persons who may need to use them. This requirement would prevent physical damage or contamination of the respirator that could cause the respirator to malfunction during use and allow the wearer to be overexposed. Some examples of damage or contamination are cuts or abrasions in the facepiece, dents or holes in canisters or cartridges, damage to seals due to improper placement, or from dust, chemicals, grease, or paints. Extreme heat or cold can also cause damage that could affect the proper function of a respirator. Damage or contamination can occur when respirators are stored in tool boxes, multiple-use storage lockers, lunch boxes, hung on walls, laid on tables, desks, counters, or any area where work actively could adversely affect the respirator. In determining whether respirators are properly stored, MSHA would consider whether there is opportunity for damage or

contamination to occur, or whether damage or contamination has occurred.

So that respirators are not subject to unauthorized access, one commenter submitted that "readily available" would be a more appropriate requirement than "accessible" for emergency-use respirator storage. MSHA agrees that emergency-use respirators need to be readily available and protected from unauthorized access but interprets "in a manner that protects them from contamination or damage" to include potential damage from unauthorized access. Unauthorized access can be prevented by storage in occupied areas such as control rooms, shops, rescue rooms, first-aid rooms, or warehouses.

Paragraph (f) would require that qualitative or quantitative respirator fit tests be conducted for respirators with tight-fitting facepieces. This would ensure that the facepiece fits the wearer and would minimize or eliminate the possibility of inward leakage of a hazardous substance.

The facepiece seal of a respirator must be adequate so that the wearer does not inhale the hazardous substance. If the fit is inadequate, air will move into the facepiece through the pathway of least resistance, leaking through the seal around the facepiece. This can occur even in positive-pressure apparatus if the fit is poor due to air turbulence in the facepiece which causes small eddies of negative pressure. Such leakage circumvents the protection that the respirator provides the wearer.

This provision would apply only to respirators with tight-fitting facepieces. Loose-fitting respirators, such as helmets or hoods, are designed so that their effectiveness is not dependent on fit. Mouthpiece respirators would not be covered because they do not have tight-fitting facepieces that would require fit testing.

MSHA recognizes that in the past qualitative fit tests were unreliable because of inadequate design and procedure. However, the Agency believes that there are simple and effective qualitative fit tests currently available that have been demonstrated for protection factors of 10. Because qualitative fit-testing procedures have not been validated adequately for fit factors greater than 10, any respirator, regardless of type, would be limited to a protection factor of 10 if the respirator wearer was qualitatively tested. Disposable respirators would be limited to a protection factor of 5.

In the metal/nonmetal preproposal draft, MSHA specified use of a series of test agents at 6-month intervals for conducting fit tests. Test agents, such as odorous vapors, are used to simulate potential invasion of a respirator by a hazardous substance. Many commenters felt that the standard should not specify the procedures to be used. MSHA concurs that the standard should be performance-oriented to allow the mine operator flexibility. However, based on MSHA experience, many operators will find that they will need different types of test agents for qualitative fit testing because of an individual's insensitivity to vapors or particulates such as isoamyl acetate, irritant smoke, or saccharin. To assist operators in conducting qualitative fit testing, MSHA is proposing a nonmandatory appendix of recommended procedures. MSHA solicits comment as to the need for mandatory protocols.

MSHA believes that the majority of respirator wearers will need only qualitative fit testing. For those few cases where qualitative fit testing would be inadequate, the operator would be required to conduct qualitative fit testing. Quantitative fit testing utilizes sensitive equipment to determine the ratio of the concentration of a test agent inside the respirator wearer's facepiece by a probe inserted inside the facepiece. The equipment simultaneously measures the concentration of the test agent in the test chamber and within the facepiece. By comparing these two concentrations, a protection factor can be determined. The sensitivity of the instrumentation allows for the determination of protection factors greater than 10.

However, because the fit testing is done in a laboratory environment which is unlike actual working conditions, the protection factor determined under testing conditions would have to be divided by 10 to attain the working protection up to the maximum-use protection factor listed in the selection tables. For quantitative fit testing, a minimum ratio of 100 must be obtained in order to be considered providing a satisfactory fit. This number of 100 is equivalent to the minimum level achieved by a qualitative fit test. The maximum-use protection factors listed in these tables are the highest that MSHA believes have been adequately verified for protection factors in the work environment. MSHA requests comments on these protection factors. MSHA intends to follow the NIOSH rulemaking closely to ensure that MSHA's final rule is consistent with the NIOSH certification program.

MSHA would restrict all negative-pressure SCBA to 50, except for those approved for closed-circuit demand respirators approved for mine rescue. Based upon the Agency's experience with this type of respirator in the mining work environment, MSHA believes that a higher protection factor for mining is warranted. SCBA approved for mine rescue would be assigned protection factors greater than 1000 for IDLH or unknown concentrations.

Many of the commenters stated that annual fit testing would be adequate to ensure that respirators still fit the individual. They also pointed out that ANSI Z88.2–1980 specifies annual testing. Commenters felt that annual fit testing could be done with the annual refresher training. MSHA agrees, and the proposed rule would require fit tests after the initial fit test at least once every 12 months.

Some commenters felt that negative-pressure and positive-pressure seal checks should be considered a qualitative fit test. Although such testing is adequate as a field test to check the seal of the facepiece known to fit a wearer prior to entering a hazardous atmosphere, it is inadequate as a selection test. This is consistent with ANSI Z88.2–1980, other federal regulatory agencies, and other fit-test protocols.

Paragraph (g) would require accurate records to be kept for 1 year from the latest fit test, or until the next fit test is recorded for each respirator wearer, regardless of how often the person actually wears the respirator. Matching the appropriate make, model, and size respirator to each wearer is essential for providing the necessary respiratory protection. These records would provide mine operators with a fit reference for each worker for any subsequent need for wearing respirators. The proposed rule would require that the record include the test date, the wearers name, and the specific make, model, and size of respirators for which there was a satisfactory fit. If quantitative fit tests are used, the protection factor determined by the testing also would be recorded. For a respirator to adequately protect the wearer, it must fit the wearer's facial size and contours. Because the face varies considerably from person to person, especially the critical areas of the nose and chin, even small groups of wearers might require multiple sizes and models of respirators to fit every member of the group. The more employees an operator has, the more likely a wider variety of respirators would be needed. These physiological variables are compounded when a mine site includes various working environments that would require different levels of respiratory protection. For example, some tasks may require a person to wear only a

half-face respirator for protection, while other tasks may require the same person to wear a full-face gas mask. That person's fit-test information would be specific for each type of respirator.

Fit-test records also determine when a person's required fit test is due. MSHA would require fit tests to be conducted once every 12 months because changes in body weight, facial wrinkles, scars, and the presence of dentures, would each affect the fit of a respirator.

For respirators with a tight-fitting facepiece, paragraph (h) would require that a negative- and positive-pressure sealing test or an equivalent qualitative sealing test be done prior to each use. This sealing test is essential prior to entry into hazardous atmospheres to ensure that the face-to-respirator seal does not leak, potentially allowing overexposure of the wearer. The existing standard requires that the facepiece fit be checked by the wearer each time the respirator is put on. ANSI Z88.2–1980 coninues to specify that facepiece seal be checked prior to each entry into a hazardous atmosphere.

When a wearer is donning a respirator, the straps of the respirator can be adjusted to various tensions and the facepiece can be fitted in different positions at the nose and chin. Incorrect positioning of a respirator can cause leakage and result in exposure to airborne substances.

Once a respirator has been shown to fit an individual by use of a qualitative or quantitative fit test, then there is reasonable assurance that an adequate face-to-respirator seal can be achieved. The positive- and negative-pressure seal tests are a field method to check that facepiece-to-face seal in the workplace reproduces the seal achieved when the fit testing was performed. In addition to checking the seal, these tests can be used to detect faulty parts of respirators such as torn, missing, or misthreaded cartridges. The negative and positive-pressure test checks different parts of the respirator such as inhalation and exhalation valves.

Several commenters were concerned that the metal/nonmetal preproposal draft would have precluded the use of disposable particulate respirators since a positive- and negative-pressure seal test cannot be performed with many of them. MSHA has included the wording "use of an equivalent qualitative sealing test" to allow for disposable respirators. The intent is not to duplicate the steps involved in conducting a fit test but rather to allow use of a test agent, such as banana oil or saccharin, to test the seal.

Paragraph (i) would prohibit use of respirators with tight-fitting facepieces when facial hair comes between the sealing surface of the respirator facepiece and the face. This provision is similar to the existing standard, but MSHA did not include this requirement in the metal-nonmetal preproposal draft. Test data, industrial use data, and MSHA's own fit-test data show the difficulty of obtaining a satisfactory seal when facial hair comes between the facepiece and face. This provision would be consistent with the guidelines in ANSI Z88.2–1980.

Paragraph (j) would require that respirator wearers, supervisors, and persons issuing or maintaining respirators be trained initially and then once every 12 months in the selection, use, and maintenance of respiratory devices. The proposed standard allows flexibility in the development of a proper training program according to the complexity of a site's needs. The trained worker should be able to demonstrate an acceptable level of familiarity and competence in performing the assigned duties and understand each element of the training program.

Training of individuals involved in a respirator protection program, whether the wearer, supervisor, issuer, or maintainer, is important for the success of the program. Trained wearers should know how to conduct proper sealing tests to detect leaks and be alert for contamination damage not detected in a before-use inspection. Trained persons responsible for maintenance, including cleaning or sanitizing, should know the importance of reassembling the internal parts of a respirator properly so that wrong replacement parts which could cause respirator malfunction are not substituted. Training helps ensure that proper respirators are selected and used, so that respirator failure or lack of protection due to improper filters or cartridges does not occur. A trained supervisor should know how to oversee proper use and maintenance of respirators.

Two commenters stated that the training requirements should be deleted since they are covered in 30 CFR part 48 "Training and Retraining of Miners." MSHA believes that for the most part the training requirements in Part 48 adequately would meet the respirator training requirements in this proposal. Consistent with the current requirements, if a respirator program is necessary, potential respirator wearers must receive initial training that encompasses all of the individual aspects necessary to protect them from the hazardous contaminant identified. Under 30 CFR 48.25(b)(2), training must include instruction and demonstration in the use, care, and maintenance of self-rescue and respiratory devices, where applicable. However, under the proposal, operators would have to provide separate respirator training in instances in which miners do not receive respirator training in Part 48 instruction.

Paragraph (k) would require that compressors or blowers used to provide respirable air be constructed and located to prevent entry of contaminated air into the air-supply system. The intent is to prevent the intake of air contaminated by external sources. This paragraph would also require that compressors be equipped with in-line air purifying sorbent beds or filters. One commenter suggested that when the quality of the intake air is adequate, non-oil-lubricated compressors specifically designed to supply breathing air should not be required to have in-line air-purifying sorbent beds. However, with such compressors, assurance of the quality of intake air would require continuous or frequent monitoring for the presence of a number of potential contaminants, such as organic particulate matter. This is unnecessary with an in-line purifier.

Paragraph (k) would also require that oil-lubricated compressors be equipped with a carbon-monoxide or high-temperature alarm. Internally, oil-lubricated compressors can produce carbon monoxide when overheated, necessitating a carbon-monoxide alarm or high-temperature alarm. Either alarm should be adequate to warn users of a potential problem for the supplied air user. In one nearly fatal mining accident, the high temperature alarm in a compressor was disconnected, resulting in a sand blaster's being poisoned by carbon monoxide. Several commenters suggested that all compressors should have carbon monoxide alarms. However, the potential for carbon monoxide contamination in non-oil-lubricated compressors from external sources, such as car exhaust, is far less likely than from oil-lubricated compressors where the compressor itself could be the source of carbon monoxide. Furthermore, the construction and location requirements of this provision make it unnecessary to require carbon monoxide alarms for non-oil-lubricated compressors.

Paragraph (l) would require that supplied air or oxygen used for respiration meet the requirements of 30 CFR part 11. It is essential that supplied, compressed air or oxygen is of the same quality as that used for the approval of the respirator. Some commenters expressed concern about the availability of supplied air or oxygen that would meet this requirement. The Agency

believes that supplied air or oxygen meeting the 30 CFR part 11 requirements is readily available through commercial gas suppliers.

Paragraph (m) would prohibit compressed oxygen from being used in atmosphere-supplying respirators or in open-circuit, self-contained breathing apparatus that have previously used compressed air. Compressed gaseous air may contain low concentrations of oil, even when it meets breathing quality criteria. If high-pressure oxygen passes through an oil-coated or grease-coated orifice, an explosion or fire could occur.

Section 58/72.550 Medical Surveillance Program

The proposed rule would require that mine operators establish a medical surveillance program in writing whereby a miner cannot be assigned to wear respiratory protection until it has been determined by a licensed physician that the miner is physically able to wear the respirator while performing the work. It is critical that miners be able to wear the respirator because each miner's job performance and actions may affect his or her own health and safety, as well as the health and safety of other miners. The operator would have to comply with any medical or physical limitations related to respirator use as determined by the physician. Medical evaluations are currently required at metal/nonmetal mines through the incorporation by reference of ANSI Z88.2–1969, "American National Standard for Respiratory Protection." As required by statute, all costs of medical examinations, including the employee's time, would have to be paid by the mine operator.

Medical examinations, as well as the other elements of the proposal, would apply only when respiratory protection is required by MSHA. It would not be required for voluntary use of respirators; however, in such instances MSHA would encourage operators to follow the elements of the proposed respiratory protection program.

In the proposal MSHA has specified only the types of information that the operator would have to provide to the examining physician. The Agency considers this information the minimum necessary to conduct a meaningful evaluation; it is consistent with the requirements in ANSI Z88.6–1984, "American National Standard for Respiratory Protection—Respirator Use—Physical Qualifications for Personnel." MSHA has not specified the physician's evaluation procedures because the Agency believes that a physical examination must be tailored to the individual respirator wearer. The physician who ultimately decides if an individual can wear respiratory protection is the person who can best determine the requirements of the exam. However, MSHA recognizes that some local physicians may not be familiar with this type of examination; therefore the Agency is proposing to include a nonmandatory appendix to assist such physicians. The appendix is consistent with ANSI Z88.6–1984.

Under the proposal, a person would have to be examined prior to using respiratory protection, at any time the wearer experiences difficulty breathing while being fitted or while using a respirator, and at intervals designated according to a frequency table based on the age of the wearer and working conditions. The proposed frequency table is derived from the "NIOSH Guide to Industrial Respiratory Protection" (1987) and ANSI Z88.6–1984. More frequent examinations with advancing age relate to the increased prevalence of most diseases in older people. More frequent examinations are also important for individuals doing strenuous work involving the use of SCBA.

MSHA believes that the majority of situations requiring respirator use could be remedied by other controls within a year. If the overexposure is such that the respirator must be worn on a long-term basis, it is critical that the wearer be examined periodically. A change in lung or heart function could severely affect the ability of the person to wear the assigned respiratory protection. The outcome of a periodic exam might require no change in respiratory protection, or it might require use of a respirator with a lower breathing resistance or less weight.

The proposed rule would require medical records from the licensed physician to be kept for 5 years. MSHA believes that this period of time is sufficient to determine if the wearer has experienced any medical changes from respirator usage. MSHA requests comment on the appropriate retention period of these medical records and any benefit a longer retention period would provide.

The proposed rule would require that miners who have been determined to be unable to wear a respirator, based upon the medical evaluation carried out under this subpart by a licensed physician, be transferred to an area of the mine where respiratory protection is not required.

The operator would have to notify MSHA in writing within 15 calendar days from receipt of the licensed physician's report indicating that the miner cannot do work where respirators are required. The notice would have to include the miner's occupation, new assignment, and the date of transfer, which must take place on or before the 21st calendar day following receipt by the operator of the licensed physician's report. Under this proposal, at any time an operator transfers a miner, the operator is required to assign the miner to an existing job at the same mine. The standard would provide miners the flexibility to transfer to a job at a different mine if agreed upon between the mine operator and the miner.

The proposal also includes compensation protection for transferred miners. The miner would retain at least the previsous hourly rate of pay and subsequently would receive actual increases applicable to the assigned work classification.

MSHA requests comment on the feasibility of expanding the scope of the provisions on medical surveillance and medical transfer for some workers exposed to carcinogens and respirator wearers. The Agency realizes that these provisions are not as extensive as medical surveillance and transfer rights of 30 CFR Part 90 miners. However, the number of miners that would be affected by this provision would be very limited. Small operators, such as those in sand and gravel, would have few operations that would not be controlled so that respirators would have to be used. Also, if a carcinogen would have to be used in a laboratory and a miner would elect to transfer, other positions would be available, such as crusher or dredge operator, which would have no exposure to the carcinogen.

Other Changes

Existing §§ 56/57.20014, "Prohibited areas for food and beverages," would be revised and renumbered as § 58.600. No such standard now exists for coal mines. This standard addresses the need to keep food and beverages out of toilet rooms or areas where they could become contaminated by hazardous substances. The same standard is proposed as § 72.600 for coal mines.

Existing § 70.300 would be revised as a new § 70.300 would be revised as a new § 70.302. The revised standard would require approved respiratory protecton to be provided and used by persons exposed to excessive levels of respirable dust. This provision would also be added to Parts 71 and 90 as new §§ 71.302 and 90.302.

V. Executive Order 12291 and Regulatory Flexibility Act

A. Summary of Costs and Benefits

Under Executive Order 12291, MSHA has prepared an initial analysis to identify potential costs and benefits associated with proposed changes to its standards for air quality, chemical substances, and respiratory protection standards in metal/nonmetal and coal mines. The Agency has incorporated this analysis into the initial regulatory flexibility analysis required by the Regulatory Flexibility Act. In this analysis, MSHA has determined that the proposed rule would not result in major cost increases nor have an incremental effect of $100 million or more on the economy.

The benefits of the proposed rule are the fatalities and illnesses that will be prevented at approximatley 15,600 mines with about 324,000 employees. MSHA estimates that a minimum of 880 cases of adverse health effects can be prevented in the mining industry. On an annual basis, the proposed rule will prevent 22 cases of adverse health effects. It will also prevent an average of about seven injuries that occur each year resulting from entry into confined spaces. These are considered conservative estimates because exposure data are not available for many of the chemicals whose permissible exposure levels are being reduced, and therefore quantitative estimates cannot be made. MSHA requests additional data to better describe the population at risk that will be affected by this proposed rule.

MSHA estimates that the incremental annual and annualized cost of complying with the proposed rule, assuming full compliance with the existing standards, is $11.28 million; $8.43 million for metal and nonmetal mines and $2.86 million for coal mines. Annual and annualized costs are $3.05 million at small metal and nonmetal mines and $1.80 million at small coal mines.

Specific mines in some cases may incur higher compliance costs than the norm. Mines with exposures to asbestos, for example, may incur greater than the average compliance costs due to extensive controls that are required. MSHA lacks information on the exact number of affected mines and the cost of controls and therefore cannot determine the economic impact for these unique situations. MSHA requests additional data to more accurately determine the economic impact of the proposed rule.

The Regulatory Flexibility Act requires that, in developing regulatory proposals, agencies evaluate and include, wherever possible, compliance alternatives that, minimize any adverse impact on small businesses. MSHA believes that, due to the size of the workforce, small mines are likely to have fewer workers performing tasks for longer periods of time than large mines; consequently, 8-hour time-weighted limits are less likely to be exceeded in small mines than in large mines. MSHA is uncertain of the impact on small mines resulting from exceeding short-term exposure limits because many STEL's have been eliminated.

B. Request for Additional Information

MSHA requests additional information to form a better basis for its final regulatory impact analysis. All information received will be carefully evaluated in developing the final rule. Of particular interest to MSHA is information concerning the following:

1. What is produced at the mine you work at or operate?

2. How many full-time employees work at this operation? Part-time employees?

3. How many areas such as silos, vats, tanks, and other types of confined spaces exist at the mine you work at or operate? How often, on the average, are these entered during a year?

4. Is the atmosphere in these confined spaces tested for suspected hazardous gases and vapors prior to entry? Describe the precautions taken prior to entry into confined spaces (for example, respiratory protection, rescue personnel, means of communicating to the persons at increased risk).

5. To what airborne substances are miners overexposed under the existing rule? How many miners are overexposed to each substance? If possible, provide data documenting these exposures.

6. How many cases of worker illness due to chemical exposures have been recognized in this mine? To what chemicals were they exposed? What were the circumstances of exposure? How was the illness detected? What steps were taken to remedy the overexposure?

7. What is currently being done to measure exposures to airborne contaminants, including asbestos and other carcinogens? What kind of equipment is being used to determine exposures? How often are measurements taken?

8. How often do overexposures to airborne contaminants occur (daily, weekly, monthly)? What is the duration of these overexposures (hours/day, days/week)?

9. What measures are currently being taken to minimize exposures to these airborne substances? What engineering controls would be required to reduce these overexposures to the levels identified in the existing rule? In the proposed rule? How much do these controls cost?

10. How often do asbestos overexposures occur at this mine (hourly, daily, weekly)? What is the duration of these overexposures (hours/day, days/week)? If possible, provide data documenting these exposures.

11. What controls are currently being done (for example, engineering controls, administrative procedures) to minimize exposures to asbestos? What engineering controls would be required to reduce overexposures to asbestos to the level identified in the existing rule? In the proposed rule? What do these controls cost?

12. How many miners are overexposed to the carcinogens listed in the proposal? How often do overexposures to these carcinogens occur (hourly, daily, weekly, monthly)? What is the duration of these overexposures (hours/day, days/week)? If possible, provide data documenting these exposures.

13. What controls are currently being done to minimize exposure to these carcinogens? What engineering controls would be required to reduce overexposures to these carcinogens to the levels identified in the existing rule? In the proposed rule? What do these controls cost?

14. How are areas where asbestos and other carcinogens are being used delineated from other areas? Are instructions informing employees of the procedures to be followed posted at these areas? Is food storage or consumption prohibited in these areas?

15. What types of protective clothing are miners wearing when working in areas where asbestos and other carcinogens are being used?

16. What types of precautions are being taken when leaving areas where asbestos and classes 1 through 4 carcinogens are being used (for example, appropriate disposal of contaminated clothing, hand and face washing, showering, etc.)?

17. What kind of training is conducted for employees working with asbestos and other carcinogens?

18. Are medical surveillance programs provided to employees overexposed to carcinogens; asbestos, in particular? To individuals required to wear respirators? What are the components of the medical surveillance program? What are their costs?

19. Are respiratory protection programs provided for miners

overexposed to carcinogens, including asbestos? To other airborne substances? What are the comopnents of these programs and their costs?

20. Provide any compliance cost, exposure, and industry profile data as they relate to abrasive blasting and drill dust control.

VI. Reference Tables

The following tables list changes and additions, resulting from the proposed exposure limits.

TABLE 5—SUBSTANCES THAT WOULD BE REGULATED FOR THE FIRST TIME UNDER THE PROPOSED RULE FOR BOTH METAL/NONMETAL AND COAL MINES.

Acetylsalicylic acid	TWA		5 mg/m³
Acrylic acid	TWA	3 ppm	6 mg/m³
Amitrol	TWA		0.2 mg/m³
Ammonium perfluorooctanoate	TWA		0.1 mg/m³
Atrazine	TWA		5 mg/m³
Barium sulfate	TWA		10 mg/m³
Benomyl	TWA	0.8 ppm	10 mg/m³
Benzo(a)pyrene (commercially manufactured)	Carcinogen		
bis(Chloromethyl) ether	TWA, Carcinogen	0.001 ppm	0.005 mg/m³
Borates, tetra, sodium salts, all forms	TWA		5 mg/m³
Bromacil	TWA	1 ppm	10 mg/m³
Butyl acrylate	TWA	10 ppm	55 mg/m³
n-Butyl lactate	TWA	5 ppm	25 mg/m³
o-sec Butyl phenol	TWA	5 ppm	30 mg/m³
Calcium cyanamide	TWA		0.5 mg/m³
Caprolactam dust	TWA		1 mg/m³
Captrolactam vapor	TWA	5 ppm	20 mg/m³
Captafol	TWA		0.1 mg/m³
Captan	TWA		5 mg/m³
Carbofuran	TWA		0.1 mg/m³
Carbon tetrabromide	TWA	0.1 ppm	1.4 mg/m³
Carbonyl fluoride	TWA	2 ppm	5 mg/m³
Catechol	TWA	50 ppm	20 mg/m³
Cesium hydroxide	TWA		2 mg/m³
Chloroacetone	Ceiling	1 ppm	4 mg/m³
Chloroacetyl chloride	TWA	0.05 ppm	0.2 mg/m³
Chlorodifluoromethane	TWA	1000 ppm	3,500 mg/m³
Chloropentafluorethane	TWA	1000 ppm	6,320 mg/m³
o-Chlorostyrene	TWA	50 ppm	285 mg/m³
o-Chlorotoluene	TWA	50 ppm	250 mg/m³
Chloropyrifos	TWA		0.2 mg/m³
Chromyl chloride	TWA	0.025 ppm	0.15 mg/m³
Chrysene (commercially manufactured)	Carcinogen		
Clopidol	TWA		10 mg/m³
Cobalt carbonyl	TWA		0.1 mg/m³
Cobalt hydrocarbonyl, as Co	TWA		0.1 mg/m³
Crufomate	TWA		5 mg/m³
Cyanamide	TWA		2 mg/m³
Cyanogen chloride	Ceiling	0.3 ppm	0.6 mg/m³
Cyclohexylamine	TWA	10 ppm	40 mg/m³
Cyclopentane	TWA	600 ppm	1,720 mg/m³
Cyhexatin	TWA		5 mg/m³
Dibutyl phenyl phosphate	TWA	0.3 ppm	3.5 mg/m³
Dichloroacetylene	Ceiling	0.1 ppm	0.4 mg/m³
Dichloropropene	TWA	1 ppm	5 mg/m³
2,2-Dichloropropionic acid	TWA	1 ppm	6 mg/m³
Dicrotophos	TWA		0.25 mg/m³
Dicyclopentadiene	TWA	5 ppm	30 mg/m³
Dicyclopentadienyl iron	TWA		10 mg/m³
Diethanolamine	TWA	3 ppm	15 mg/m³
Diethyl ketone	TWA	200 ppm	705 mg/m³
Diethyl phthalate	TWA		5 mg/m³
Dimethyl carbamoyl chloride	Carcinogen		
Dinitolmide	TWA		5 mg/m³
Dipropyl ketone	TWA	50 ppm	235 mg/m³
Disulfiram	TWA		2 mg/m³
Disulfoton	TWA		0.1 mg/m³
2,6-Di-tert-butyl-p-cresol	TWA		10 mg/m³
Diruon	TWA		10 mg/m³
Divinyl benzene	TWA	10 ppm	50 mg/m³
Enflurane	TWA	75 ppm	575 mg/m³
Ethion	TWA		0.4 mg/m³
Ethylidene norbornene	Ceiling	5 ppm	25 mg/m³
Fenamiphos	TWA		0.1 mg/m³
Fensulfothion	TWA		0.1 mg/m³
Fenthion	TWA		0.2 mg/m³
Fonofos	TWA		0.1 mg/m³
Formamide	TWA	10 ppm	15 mg/m³
Glutaraldehyde	Ceiling	0.2 ppm	0.8 mg/m³
Halothane	TWA	50 ppm	400 mg/m³
Hexachlorobutadiene	TWA, Carcinogen	0.02 ppm	0.24 mg/m³
Hexachlorocyclopentadiene	TWA	0.01 ppm	0.1 mg/m³
Hexamethylene diisocyanate	TWA	0.005 ppm	0.035 mg/m³
Hexamethyl phosphoramide	Carcinogen		

TABLE 5—SUBSTANCES THAT WOULD BE REGULATED FOR THE FIRST TIME UNDER THE PROPOSED RULE FOR BOTH METAL/NONMETAL AND COAL MINES.—Continued

Hexylene glycol	Ceiling	25 ppm	125 mg/m³
Hydrogenated terphenyls	TWA	0.5 ppm	5 mg/m³
2-Hydroxypropyl acrylate	TWA	0.5 ppm	3.0 mg/m³
Iodoform	TWA	0.6 ppm	10 mg/m³
Isooctyl alcohol	TWA	50 ppm	270 mg/m³
Isophorone diisocyanate	TWA	0.005 ppm	0.045 mg/m³
Isopropoxyethanol	TWA	25 ppm	105 mg/m³
N-Isopropylaniline	TWA	2 ppm	10 mg/m³
Manganese cyclopentadienyl tricarbonyl, as Mn	TWA		0.1 mg/m³
Methacrylic acid	TWA	20 ppm	70 mg/m³
Methomyl	TWA		2.5 mg/m³
2-Methoxyethyl acetate	TWA	5 ppm	24 mg/m³
4-Methoxyphenol	TWA		5 mg/m³
4,4'-Methylene bis(2-chloroaniline)	TWA, Carcinogen	0.02 ppm	0.22 mg/m³
Methylene bis(4-cyclohexylisocyanate)	Ceiling	0.005 ppm	0.055 mg/m³
4,4'-Methylene dianiline	TWA, Carcinogen	0.1 ppm	0.8 mg/m³
Methyl ethyl ketone peroxide	Ceiling	0.2 ppm	1.5 mg/m³
Methyl isopropyl ketone	TWA	200 ppm	705 mg/m³
Metribuzin	TWA		5 mg/m³
Mica	TWA		3 mg/m³ Respirable dust
Mineral wool fiber	TWA		10 mg/m³
Monocroptophos	TWA		0.25 mg/m³
Naphtha (coal tar)	TWA	100 ppm	400 mg/m³
Nitrapyrin	TWA		10 mg/m³
Nonane	TWA	200 ppm	1,050 mg/m³
Paraffin wax fume	TWA		2 mg/m³
Perlite	TWA		10 mg/m³
N-Phenyl-β-naphthylamine	Carcinogen		
Phenyl mercaptan	TWA	0.5 ppm	2 mg/m³
Phorate	TWA		0.05 mg/m³
Phosphorus oxychloride	TWA	0.1 ppm	0.6 mg/m³
m-Phthalodinitrile	TWA		5 mg/m³
Picloram	TWA		10 mg/m³
Piperazine dihydrochloride	TWA		5 mg/m³
Platinum Metal	TWA		1 mg/m³
Potassium hydroxide	Ceiling		2 mg/m³
Propane sultone	Carcinogen		
Propionic acid	TWA	10 ppm	30 mg/m³
Propoxure	TWA		0.5 mg/m³
Propylene glycol dinitrate	TWA	0.05 ppm	0.3 mg/m³
n-Propyl nitrate	TWA	25 ppm	105 mg/m³
Resorcinol	TWA	10 ppm	45 mg/m³
Sesone	TWA		10 mg/m³
Silicon tetrahydride	TWA	5 ppm	7 mg/m³
Silica, precipitated	TWA		10 mg/m³
Soapstone	TWA	3 mg/m³ respirable	6 mg/m³ total
Sodium azide	Ceiling	0.1 ppm as NH_3	0.3 mg/m³ as NaN_3
Sodium bisulfite	TWA		5 mg/m³
Sodium metabisulfite	TWA		5 mg/m³
Subtilisins (Proteolytic enzymes as 100% crystalline enzyme	Ceiling		0.00006 mg/m³
Sulprofos	TWA		1 mg/m³
Tetrasodium pyrophosphate	TWA		5 mg/m³
4,4'-Thiobis(6-tert-butyl-m-cresol)	TWA		10 mg/m³
Thioglycolic acid	TWA	1 ppm	4 mg/m³
Thionyl chloride	Ceiling	1 ppm	5 mg/m³
o-Tolidine	Carcinogen		
m-Toluidine	TWA	2 ppm	9 mg/m³
p-Toluidine	TWA, Carcinogen	2 ppm	9 mg/m³
Trichloroacetic acid	TWA	1 ppm	7 mg/m³
1,2,4 Trichlorobenzene	Ceiling	5 ppm	40 mg/m³
Trichlorofluromethane	Ceiling	1000 ppm	5,600 mg/m³
Trimellitic anhydride	TWA	0.005 ppm	0.04 mg/m³
Trimethyl amine	TWA	10 ppm	24 mg/m³
Trimethyl phosphate	TWA	2 ppm	10 mg/m³
Triphenyl amine	TWA		5 mg/m³
n-Valeraldehyde	TWA	50 ppm	175 mg/m³
Vinyl cyclohexene dioxide	TWA, Carcinogen	10 ppm	60 mg/m³
Vinylidene chloride	TWA	5 ppm	20 mg/m³
VM&P Naphtha Welding fumes (not otherwise classified)	TWA	300 ppm	1,350 mg/m³
Welding fumes (not otherwise classified)	TWA		5 mg/m³
m-Xylene, α, α'-diamine	Ceiling		0.1 mg/m³

TABLE 6.—NEW SUBSTANCES FOR COAL MINES ONLY.

Bismuth telluride	TWA		10 mg/m³
Bismuth telluride (See-doped)	TWA		5 mg/m³
Diquat	TWA		0.05 mg/m³

TABLE 6.—NEW SUBSTANCES FOR COAL MINES ONLY.—Continued

Germanium tetrahydride	TWA	0.2 ppm	0.6 mg/m³
Hexafluoroacetone	TWA	0.1 ppm	0.7 mg/m³
Lead, inorganic, dusts & fumes, Pb	TWA		0.15 mg/ ³
Methyl acrylonitrile	TWA	1 ppm	3 mg/m³
Methyl bromide	TWA	15 ppm	60 mg/m³
Methyl isoamyl ketone	TWA	50 ppm	240 mg/m³
Phenylphosphine	Ceiling	0.05 ppm	0.25 mg/m³
Silicon	TWA		10 mg/m³
Sulfur tetrafluoride	TWA	0.1 ppm	0.5 mg/m³
Toluene	TWA	100 ppm	375 mg/m³

TABLE 7.—SUBSTANCES THAT WOULD BE REGULATED FOR THE FIRST TIME FOR METAL/NONMETAL MINES ONLY. COAL MINES EITHER DO NOT HAVE THESE PROCESSES OR THE PARTICULATES WOULD BE REGULATED UNDER THE COAL MINE DUST STANDARDS.

Arsenic trioxide production		Carcinogen
Respirable mine dust	TWA	5 mg/m³ respirable dust
Silica, gel	TWA	10 mg/m³
Silica, precipitated	TWA	10 mg/m³
Nickel sulfide roasting as Ni		1 mg/m³
Tripoli	TWA	0.1 mg/m³ of contained respirable quartz

TABLE 8.—CHANGES OF TWA EXPOSURE LIMITS FOR SUBSTANCES CURRENTLY REGULATED AT METAL/NONMETAL AND COAL MINES.

Chemical	Proposed PEL	Current PEL
Acetone	750 ppm, 1800 mg/m³	1000 ppm, 2,400 mg/m³
Acrylamide	0.03 mg/m³	0.3 mg/m³
Acrylonitrile	2 ppm, 4.5 mg/m³	20 ppm, 45 mg/m³
Aluminum metal and oxide	10 mg/m³	
Aluminum pyro powders	5 mg/m³	Alundum: 10 mg/m³
Aluminum welding fumes	5 mg/m³	
Aluminum soluble salts	2 mg/m³	Corundum: 10 mg/m³
Aluminum alkyls not otherwise classified	2 mg/m³	
Aniline and homologues	2 ppm, 10 mg/m³	5 ppm, 19 mg/m³
Antimony trioxide production compounds, as As	Carcinogen, 0.2 mg/m³	Compounds as As: 0.5 mg/m³
		Calcium arsenate: 0.1 mg/m³
Asbestos	0.2 f/cc	2 f/cc
Benzene	1 ppm	Ceiling 25 ppm, 80 mg/m³
Boron tribromide	Ceiling 1 ppm, 10 mg/m³	1 ppm, 10 mg/m³
1,3 Butadiene	10 ppm, 22 mg/m³	1000 ppm, 2200 mg/m³
2-Butoxyethanol	25 ppm, 305 mg/m³	50 ppm, 240 mg/m³
n-Butyl alcohol	Ceiling 50 ppm, 150 mg/m³	100 ppm, 300 mg/m³
sec-Butyl alcohol	100 ppm, 305 mg/m³	150 ppm, 450 mg/m³
n-Butyl glycidyl ether	25 ppm, 135 mg/m³	50 ppm, 170 mg/m³
tert-Butyl chromate, as CrO_3	Ceiling 0.1 mg/m³	0.1 mg/m³
Cadmium and compounds	0.010 mg/m³	Cadmium metal dust and soluble salts: 0.2 mg/m³
	or 0.005 mg/m³ carcinogen	Cadmium oxide fume as Cd: 0.1 mg/m³
Calcium hydroxide and oxide forms	5 mg/m³	Calcium oxide: 5 mg/m³
Camphor, synthetic	2 mg/m³	12 mg/m³
Carbon monoxide	35 ppm, 40 mg/m³	50 ppm, 55 mg/m³
Carbon disulfide	4 ppm, 12 mg/m³	20 ppm, 60 mg/m³
Carbon tetrachloride	2 ppm, 12.6 mg/m³	10 ppm, 65 mg/m³
Chlorine	0.5 ppm, 1.5 mg/m³	1 ppm, 3 mg/m³
o-chlorobenzylidene malonitrile	Ceiling 0.05 ppm, 0.4 mg/m³	0.05 ppm, 0.4 mg/m³
Chloroform	2 ppm, 9.8 mg/m³	50 ppm, 240 mg/m³
1-chloro-1-nitropropane	2 ppm, 10 mg/m³	20 ppm, 100 mg/m³
β-Chloroprene	10 ppm, 35 mg/m³	25 ppm, 90 mg/m³
Chromite ore processing	0.05 mg/m³	
Chromium metal	0.5 mg/m³	
Chromium II compounds as Cr	0.5 mg/m³	Chromic acid and chromates as CrO_3: 0.1 mgm³
Chromium III compounds as Cr	0.5 mg/m³	Chromium, sol. chromic; chromous salts as Cr: 0.5 mg/m³
Chromium VI compounds as Cr	0.05 mg/m³	Chromium metal and insoluble salts: 1 mg/m³
Lead chromate as Cr	0.05 mg/m³	
Zinc chromate as Cr	0.05 mg/m³	
Cobalt, metal, fume and dust	0.05 mg/m³	0.1 mg/m³
Cyclohexanone	25 ppm, 100 mg/m³	50 ppm, 200 mg/m³
Dichlorodifluoromethane	10 ppm, 40 mg/m³	1000 ppm, 4950 mg/m³
1,1-Dichloroethane	200 ppm, 810 mg/m³	200 ppm, 320 mg/m³
1,1-Dichloro-1-nitroethane	2 ppm, 10 mg/m³	Ceiling 10 ppm, 60 mg/m³
Diatomaceous earth	6 mg/m³	20 mg/m³
Dimethylamine	10 ppm, 30 mg/m³	25 ppm, 75 mg/m³
Diglycidyl ether	0.1 ppm, 0.5 mg/m³	Ceiling 0.5 ppm, 2.8 mg/m³
Dimethyl sulfate	0.1 ppm, 0.5 mg/m³ carcinogen	1 ppm, 5 mg/m³
Dioxane	25 ppm, 90 mg/m³	100 ppm, 360 mg/m³
Epichlorohydrin	2 ppm, 10 mg/m³	5 ppm, 19 mg/m³
2-Ethoxyethanol	5 ppm, 19 mg/m³	M/NM 100 ppm, 370 mg/m³
		Coal 200 ppm, 740 mg/m³
2-Ethoxyethanol acetate	5 ppm, 27 mg/m³	100 ppm, 540 mg/m³
Ethyl acrylate	5 ppm, 20 mg/m³	25 ppm, 100 ppm

TABLE 8.—CHANGES OF TWA EXPOSURE LIMITS FOR SUBSTANCES CURRENTLY REGULATED AT METAL/NONMETAL AND COAL MINES.—Continued

Chemical	Proposed PEL	Current PEL
Ethylene chlorohydrin	Ceiling 1 ppm, 3 mg/m³	5 ppm, 16 mg/m³
Ethylene dibromide	Carinogen	M/NM 20 ppm, 145 mg/m³
		Coal 25 ppm, 190 mg/m³
Ethylene dichloride	10 ppm, 4 mg/m³	50 ppm, 200 mg/m³
Ethylene glycol	Ceiling 50 ppm, 125 mg/m³	100 ppm, 260 mg/m³
Ethylene glycol dinitrate	STEL 0.1 mg/m³	0.2 ppm
Ethylene oxide	1 ppm, 2 mg/m³	50 ppm, 90 mg/m³
n-Ethylmorpholine	5 ppm, 23 mg/m³	20 ppm, 94 mg/m³
Ethyl silicate	10 ppm, 85 mg/m³	100 ppm, 850 mg/m³
Formaldehyde	1 ppm, 1.5 mg/m³	Ceiling 2 ppm, 3 mg/m³
Furfural	2 ppm, 8 mg/m³	5 ppm, 20 mg/m³
Gasoline	300 ppm	900 mg/m³
		From additive limit of separate chemicals in gasoline
Gylcidol	25 ppm, 75 mg/m³	50 ppm, 150 mg/m³
Heptane (n-heptane)	400 ppm, 1,600 mg/m³	500 ppm, 2,000 mg/m³
Hexane		
n-hexane	50 ppm, 180 mg/m³	n/Hexane: 500 ppm, 1800 mg/m³
other isomers	500 ppm, 1800 mg/m³	
Hydrogen bromide	Ceiling 3 ppm, 10 mg/m³	3 ppm, 10 mg/m³
Hydrogen cyanide	Ceiling 10 ppm, 10 mg/m³	10 ppm, 11 mg/m³
Hydrogen fluoride as F	Ceiling 2 ppm, 2.5 mg/m³	3 ppm, 2 mg/m³
Iron oxide fume Fe_2O^3 as Fe	5 mg/m³	10 mg/m³
Isobutyl alcohol	50 ppm, 150 mg/m³	100 ppm, 300 mg/m³
Isopropyl ether	500 ppm, 2100 mg/m³	250 ppm, 1050 mg/m³
Isophorone	Ceiling 5 ppm, 25 mg/m³	25 ppm, 140 mg/m³
Manganese as Mn, dust and compound	Ceiling 5 mg/m³	Manganese, as Mn, Dust and compounds:
Manganese as Mn, fume	1 mg/m³	Ceiling 5 mg/m³
Mercury, as Hg—Alkyl compounds	0.01 mg/m³	Mercury alkyl compounds: 0.01 mg/m³
Mercury, as Hg—Vapor	0.05 mg/m³	
Mercury, as Hg—Aryl and inorganic compounds	0.1 mg/m³	Mercury all forms except alkyl 0.05 mg/m³
Mesityl oxide	15 ppm, 60 mg/m³	25 ppm, 100 mg/m³
2-Methoxyethanol	5 ppm, 16 mg/m³	25 ppm, 80 mg/m³
Methyl-n-amyl ketone	50 ppm, 235 mg/m³	100 ppm, 465 mg/m³
Methyl n-butyl ketone	5 ppm, 20 mg/m³	100 ppm, 410 mg/m³
Methyl chloride	50 ppm, 105 mg/m³	100 ppm, 210 mg/m³
Methylcyclohexane	400 ppm, 1600 mg/m³	500 ppm, 2000 mg/m³
Methylene bisphenyl isocyanate	0.005 ppm, 0.055 mg/m³	0.02 ppm, 0.2 mg/m³
Methylene bromide	5 ppm, 20 mg/m³	15 ppm, 60 mg/m³
Methylene chloride	50 ppm, 175 mg/m³	500 ppm, 1740 mg/m³
Methyl iodide	2 ppm, 10 mg/m³	5 ppm, 28 mg/m³
Methyl isoamyl ketone	50 ppm, 240 mg/m³	100 ppm, 475 mg/m³
Methyl isobutyl ketone	50 ppm, 205 mg/m³	100 ppm, 410 mg/m³
Methyl silicate	1 ppm, 6 mg/m³	Ceiling 5 ppm, 30 mg/m³
α-Methyl styrene	50 ppm, 240 mg/m³	100 ppm, 480 mg/m³
n-Methyl aniline	0.5 ppm, 2 mg/m³	2 ppm, 9 mg/m³
Nickel—Metal	1 mg/m³	Nickel, metal and soluble compounds as Ni 1 mg/m³
Nickel soluble compound as Ni	0.1 mg/m³	
p-Nitroaniline	3 mg/m³	6 mg/m³
p-Nitrochlorobenzene	0.1 ppm, 0.6 mg/m³	1 mg/m³
Nitroglycerin	0.05 ppm, 0.5 mg/m³	0.2 ppm
Nitrogen dioxide	3 ppm (6 mg/m³) or 1 ppm STEL	Ceiling 5 ppm, 9 mg/m³
2-Nitropropane	10 ppm, 35 mg/m³ carcinogen	25 ppm, 90 mg/m³
Nitrotoluene	2 ppm, 11 mg/m³	5 ppm, 30 mg/m³
Nitrous oxide	50 ppm, 91 mg/m³	Simple asphyxiant
Octane	300 ppm, 1,450 mg/m³	400 ppm, 1900 mg/m³
Oil mist	5 mg/m³	Oil mist particulate 5 mg/m³ and oil, mist, and vapor, additive effect of components
Oxygen difluoride	Ceiling 0.05 ppm, 0.1 mg/m³	0.05 ppm, 0.1 mg/m³
Paraquat, respirable sizes	0.1 mg/m³	0.5 mg/m³
Perchloroethylene	25 ppm, 170 mg/m³ carcinogen	100 ppm, 670 mg/m³
Phenyl glycidyl ether	1 ppm, 6 mg/m³	10 ppm, 60 mg/m³
Phosphorus trichloride	0.2 ppm, 1.5 mg/m³	0.5 ppm, 3 mg/m³
Phthalic anhydride	1 ppm, 6 mg/m³	2 ppm, 12 mg/m³
β-Propiolactone	0.5 ppm, 1.5 mg/m³ carcinogen	Carcinogen no limit
Propylene oxide	20 ppm, 50 mg/m³	100 ppm, 240 mg/m³
Stoddard solvent	100 ppm, 525 mg/m³	200 ppm, 1,150 mg/m³
Styrene, monomer	50 ppm, 215 mg/m³	100 ppm, 420 mg/m³
Sulfur dioxide	2 ppm, 5 mg/m³	5 ppm, 13 mg/m³
Sulfur monochloride	Ceiling 1 ppm, 6 mg/m³	1 ppm, 6 mg/m³
Sulfur pentafluoride	Ceiling 0.01 ppm, 0.1 mg/m³	0.025 ppm, 0.25 mg/m³
Terphenyl	Ceiling 0.5 ppm, 5 mg/m³	Ceiling 1 ppm, 9 mg/m³
1,1,2,2-Tetrachloroethane	1 ppm, 7 mg/m³	5 ppm, 35 mg/m³
Tetraethyl lead, as Pb	0.075 mg/m³	0.1 mg/m³
Tetra methyl lead, as Pb	0.075 mg/m³	0.15 mg/m³
Thiram	1 mg/m³	5 mg/m³
Tin oxide	2 mg/m³	10 mg/m³
Toluene-2,4 diisocyanate	0.005 ppm, 0.04 mg/m³	Ceiling 0.02 ppm, 0.14 mg/m³
o-Toluidine	2 ppm, 9 mg/m³	5 ppm, 22 mg/m³

TABLE 8.—CHANGES OF TWA EXPOSURE LIMITS FOR SUBSTANCES CURRENTLY REGULATED AT METAL/NONMETAL AND COAL MINES.—Continued

Chemical	Proposed PEL	Current PEL
Tributyl phosphate	0.2 ppm, 2.5 mg/m³	5 mg/m³
Trichloroethylene	50 ppm, 270 mg/m³	100 ppm, 535 mg/m³
1,2,3 trichloropropane	10 ppm, 60 mg/m³	50 ppm, 300 mg/m³
Triethylamine	10 ppm, 40 mg/m³	25 ppm, 100 mg/m³
Trinitrotoluene	0.5 mg/m³	1.5 mg/m³
Vanadium dust	0.05 respirable dust	0.5 mg/m³ total dust
Vinyl bromide	5 ppm, 10 mg/m³	250 ppm, 1,100 mg/m³
Vinyl chloride	1 ppm	250 ppm, 510 mg/m³
Vinyl toluene	50 ppm, 240 mg/m³	100 ppm, 480 mg/m³
Wood dust hard woods	1 mg/m³	Wood dust non-allergenic: 5 mg/m³
Wood dust soft woods	5 mg/m³	
Xylidine	0.5 ppm, 2.5 mg/m³	5 ppm, 25 mg/m³

TABLE 9—CHANGES OF SHORT-TERM EXPOSURE LIMITS FOR COAL AND METAL/NONMETAL MINES.

Chemical	Proposed STEL	Current STEL
Acetaldehyde	150 ppm, 270 mg/m³	None.
Acetic acid	15 ppm, 37 mg/m³	40 ppm (5 min) from Pennsylvania Rules.
Acetone	1,000 ppm, 2,400 mg/m³	1,000 ppm (30 min) from Pennsylvania Rules.
Acetonitrile	60 ppm, 105 mg/m³	None.
Acrolein	0.3 ppm, 0.8 mg/m³	0.5 ppm (5 min) from Pennsylvania Rules.
Acrylonitrile	None	40 ppm (30 min) from Pennsylvania Rules.
Aldrin	None	1 mg/m³ (30 min) from Pennsylvania Rules.
Allyl alcohol	4 ppm, 10 mg/m³	5 ppm (30 min) from Pennsylvania Rules.
Allyl chloride	3 ppm, 2 mg/m³	None.
Allyl glycidyl ether	10 ppm, 44 mg/m³	10 ppm (5 min) from Pennsylvania Rules.
Allyl propyl disulfide	3 ppm, 18 mg/m³	None.
Ammonia	35 ppm, 27 mg/m³	100 ppm (30 min) from Pennsylvania Rules.
Ammonium chloride fume	20 mg/m³	None.
Amyl acetate	None	200 ppm (30 min) from Pennsylvania Rules.
Aniline	None	50 ppm (30 min) from Pennsylvania Rules.
Asbestos	1 fiber/cc	10 fibers/cc (15 min) from Pennsylvania Rules.
Benzene	5 mg/m³	75 ppm (30 min) from Pennsylvania Rules.
Benzoyl peroxide	None	10 mg/m³ (15 min) from Pennsylvania Rules.
Beryllium	None	0.025 mg/m³ (5 min) from Pennsylvania Rules.
Boron trifluoride	None	1 ppm (5 min) from Pennsylvania Rules.
Bromine	0.3 ppm, 2 mg/m³	0.4 ppm (30 min) from Pennsylvania Rules.
2-Butoxyethanol	None	200 ppm (5 min) from Pennsylvania Rules.
n-Butyl acetate	200 ppm, 950 mg/m³	300 ppm (30 min) from Pennsylvania Rules.
Butyl alcohol	None	150 ppm (30 min) from Pennsylvania Rules.
tert-Butyl alcohol	150 ppm, 450 mg/m³	150 ppm (30 min) from Pennsylvania Rules.
Butylamine	None	5 ppm (5 min) from Pennsylvania Rules.
tert-Butyl chromate	None	5 mg/m³ (5 min) from Pennsylvania Rules.
p-tert-Butyltoluene	20 ppm, 120 mg/m³	None.
Cadmium oxide fume	None	0.3 mg/m³ (30 min) from Pennsylvania Rules.
Calcium oxide	None	10 mg/m³ (30 min) from Pennsylvania Rules.
Camphor	None	3 ppm (30 min) from Pennsylvania Rules.
Caprolactam		
Dust	3 mg/m³	None.
Vapor	10 ppm, 40 mg/m³	None.
Carbaryl	None	30 mg/m³ (30 min) from Pennsylvania Rules.
Carbon dioxide	30,000 ppm, 54,000 mg/m³.	None.
Carbon disulfide	12 ppm, 36 mg/m³	100 ppm (30 min) from Pennsylvania Rules.
Carbon monoxide	200 ppm, 229 mg/m³	400 ppm (15 min) from Pennsylvania Rules.
Carbon tetrabromide	0.3 ppm	None.
Carbon tetrachloride	None	25 ppm (30 min) from Pennsylvania Rules.
Carbonyl fluoride	5 ppm, 15 mg/m³	None.
Chlordane	None	2 mg/m³ (30 min) from Pennsylvania Rules.
Chlorinated camphene	1 mg/m³	None.
Chlorine	1 ppm, 3 mg/m³	3 ppm (5 min) from Pennsylvania Rules.
Chlorine dioxide	0.3 ppm, 0.9 mg/m³	None.
Chlorine trifluoride	None	0.1 ppm (5 min) from Pennsylvania Rules.
Chloroacetaldehyde	None	1 ppm (5 min) from Pennsylvania Rules.
Chloroform	None	400 ppm (30 min) from Pennsylvania Rules.
o-Chlorostyrene	75 ppm, 430 mg/m³	None.
o-Chlorotoluene	75 ppm, 375 mg/m³	None.
Chlorpyrifos	0.6 mg/m³	None.
Cobalt	None	0.5 mg/m³ (30 min) from Pennsylvania Rules.
Copper fume	None	0.1 mg/m³ (30 min) from Pennsylvania Rules.
Cyanide, as CN	None	5 mg/m³ (30 min) from Pennsylvania Rules.
Cyclopentadiene	None	200 ppm (15 min) from Pennsylvania Rules.
Decaborane	0.15 ppm, 0.9 mg/m³	None.
Demeton	None	0.5 mg/m³ (30 min) from Pennsylvania Rules.
Dichlorvos	None	3 mg/m³ (30 min) from Pennsylvania Rules.

TABLE 9—CHANGES OF SHORT-TERM EXPOSURE LIMITS FOR COAL AND METAL/NONMETAL MINES.—Continued

Chemical	Proposed STEL	Current STEL
Diacetone alcohol	None	150 ppm (30 min) from Pennsylvania Rules.
Dibutyl phosphate	2 ppm, 10 mg/m ^{3}	None.
o-Dichlorobenzene	None	50 ppm (15 min) from Pennsylvania Rules.
p-Dichlorobenzene	110 ppm, 675 mg/m ^{3}	None.
1,3-Dichloro-5,5-dimethylhydantoin	0.4 mg/m ^{3}	0.5 mg/m ^{3} (15 min) from Pennsylvania Rules.
1,1-Dichloroethane	250 ppm, 1,010 mg/m ^{3}	200 ppm (30 min) from Pennsylvania Rules.
Dichloroethyl ether	10 ppm, 60 mg/m ^{3}	35 ppm (30 min) from Pennsylvania Rules.
1,1-Dichloro-1-nitroethane	None	10 ppm (30 min) from Pennsylvania Rules.
Dieldrin	None	1 mg/m ^{3} (30 min) from Pennsylvania Rules.
Dimethylamine	25 ppm	100 ppm (30 min) from Pennsylvania Rules.
Diglycidyl ether	None	0.5 ppm (5 min) from Pennsylvania Rules.
Diisobutyl ketone	None	50 ppm (30 min) from Pennsylvania Rules.
Dimethylamine	None	20 ppm (5 min) from Pennsylvania Rules.
N,N-Dimethylaniline	10 ppm, 50 mg/m ^{3}	None.
Dinitro-o-cresol	None	1 mg/m ^{3} (30 min) from Pennsylvania Rules.
Dipropylene glycol methyl ether	150 ppm, 900 mg/m ^{3}	None.
Di-sec-octyl phthalate	10 mg/m ^{3}	None.
Endrin	None	0.5 mg/m ^{3} (30 min) from Pennsylvania Rules.
Epichlorhydrin	None	10 ppm (30 min) from Pennsylvania Rules.
EPN	None	2.5 mg/m ^{3} (30 min) from Pennsylvania Rules.
Ethanolamine	6 ppm, 15 mg/m ^{3}	None.
2-Ethoxyethanol	None	300 ppm (30 min) from Pennsylvania Rules.
2-Ethyoxyethyl acetate	None	300 ppm (5 min) from Pennsylvania Rules.
Ethyl acetate	None	1,000 ppm (15 min) from Pennsylvania Rules.
Ethyl acrylate	15 ppm, 61 mg/m ^{3}	50 ppm (15 min) from Pennsylvania Rules.
Ethyl alcohol	None	5,000 ppm (15 min) from Pennsylvania Rules.
Ethylamine	None	25 ppm (30 min) from Pennsylvania Rules.
Ethyl benzene	125 ppm, 545 mg/m ^{3}	200 ppm (30 min) from Pennsylvania Rules.
Ethyl bromide	250 ppm, 1,110 mg/m ^{3}	None.
Ethylenediamine	None	20 ppm (5 min) from Pennsylvania Rules.
Ethylene dichloride	2 ppm, 8 mg/m ^{3}	200 ppm (30 min) from Pennsylvania Rules.
Ethylene glycol dinitrate	0.1 mg/m ^{3}	0.2 ppm (30 min) from Pennsylvania Rules.
Ethylene oxide	5 ppm	200 ppm (30 min) from Pennsylvania Rules.
Ethyleneimine	None	5 ppm (30 min) from Pennsylvania Rules.
Ethyl ether	500 ppm, 1,500 mg/m ^{3}	1,000 ppm (30 min) from Pennsylvania Rules.
N-Ethylmorpholine	None	20 ppm (15 min) from Pennsylvania Rules.
Ethyl silicate	None	200 ppm (30 min) from Pennsylvania Rules.
Ferrovanadium dust	3 mg/m ^{3}	None.
Fluorides	None	10 mg/m ^{3} (30 min) from Pennsylvania Rules.
Fluorine	2 ppm	0.5 ppm (5 min) from Pennsylvania Rules.
Formaldehyde	2 ppm, 3 mg/m ^{3}	5 ppm (5 min) from Pennsylvania Rules.
Formic acid	10 ppm, 18 mg/m ^{3}	None.
Furfural	None	15 ppm (15 min) from Pennsylvania Rules.
Furfural alcohol	15 ppm, 60 mg/m ^{3}	50 ppm (15 min) from Pennsylvania Rules.
Gasoline	500 ppm, 1,500 mg/m ^{3}	500 ppm (30 min) from Pennsylvania Rules.
Glycidol	None	100 ppm (5 min) from Pennsylvania Rules.
Heptachlor	None	2 mg/m ^{3} (30 min) from Pennsylvania Rules.
Heptane	500 ppm, 2,000 mg/m ^{3}	500 ppm (30 min) from Pennsylvania Rules.
Hexane (other than n-Hexane)	1,000 ppm, 3,600 mg/m ^{3}	500 ppm (30 min) from Pennsylvania Rules.
Hydrazine	None	1 ppm (30 min) from Pennsylvania Rules.
Hydrogen bromide	None	5 ppm (5 min) from Pennsylvania Rules.
Hydrogen chloride	None	5 ppm (5 min) from Pennsylvania Rules.
Hydrogen cyanide	None	20 ppm (20 min) from Pennsylvania Rules.
Hydrogen fluoride	None	3 ppm (15 min) from Pennsylvania Rules.
Hydrogen sulfide	15 ppm, 21 mg/m ^{3}	20 ppm (5 min) from Pennsylvania Rules.
Iodine	None	0.1 ppm (5 min) from Pennsylvania Rules.
Iron pentacarbonyl, as Fe	0.2 ppm, 1.6 mg/m ^{3}	None.
Isoamyl alcohol	125 ppm, 450 mg/m ^{3}	150 ppm (30 min) from Pennsylvania Rules.
Isoproyl acetate	310 ppm, 1,185 mg/m ^{3}	None.
Isopropyl alcohol	500 ppm, 1,255 mg/m ^{3}	None.
Isopropylaniline	10 ppm, 24 mg/m ^{3}	None.
Isopropyl glycidyl ether	75 ppm, 360 mg/m ^{3}	100 ppm (30 min) from Pennsylvania Rules.
Ketene	1.5 ppm, 3 mg/m ^{3}	None.
Lindane	None	1 mg/m ^{3} (30 min) from Pennsylvania Rules.
Manganese		
Dust	None	5 mg/m ^{3} (30 min) from Pennsylvania Rules.
Fume	3 ppm	
Mercury (alkyl compounds)	0.03 ppm	None.
Mesityl oxide	25 ppm, 100 mg/m ^{3}	None.
2-Methoxyethanol (Methyl cellosolve)	None	50 ppm (30 min) from Pennsylvania Rules.
2-Methoxyethyl acetate (ethylene glycol monomethyl ether acetate)	None	50 ppm (30 min) from Pennsylvania Rules.
Methyl acetate	250	400 ppm (5 min) from Pennsylvania Rules.
Methyl acetylene-propadiene mixture	1,250 ppm, 2,250 mg/m ^{3}	None.
Methyl acrylate	None	25 ppm (30 min) from Pennsylvania Rules.
Methyl alcohol	250 ppm, 310 mg/m ^{3}	None.
Methyl bromide	None	20 ppm (5 min) from Pennsylvania Rules.
Methyl n-butyl ketone (Hexanone)	None	200 ppm (30 min) from Pennsylvania Rules.
Methyl chloride	100 ppm, 205 mg/m ^{3}	100 ppm (5 min) from Pennsylvania Rules.
Methyl chloroform	450 ppm, 2,450 mg/m ^{3}	1,500 ppm (5 min) from Pennsylvania Rules.
Methyl 2-cyano-acrylate	4 ppm, 16 mg/m ^{3}	None.

TABLE 9—CHANGES OF SHORT-TERM EXPOSURE LIMITS FOR COAL AND METAL/NONMETAL MINES.—Continued

Chemical	Proposed STEL	Current STEL
o-Methylcyclo-hexanone	75 ppm, 345 mg/m ^{3}	Now.
Methylene bisphenyl isocynate	None	0.25 mg/m ^{3} (5 min) from Pennsylvania Rules.
Methylene chloride	500 ppm, 1,740 mg/m ^{3}	1,000 ppm (30 min) from Pennsylvania Rules.
Methyl ethyl ketone	200 ppm	300 ppm (5 min) from Pennsylvania Rules.
Methyl formate	150 ppm, 375 mg/m ^{3}	None.
Methyl isobutyl carbinol	40 ppm, 165 mg/m ^{3}	None.
Methyl isobutyl ketone	75 ppm, 300 mg/m ^{3}	400 ppm (5 min) from Pennsylvania Rules.
Methyl mercaptan	None	20 ppm (5 min) from Pennsylvania Rules.
Methyl methacrylate	None	200 ppm (15 min) from Pennsylvania Rules.
Methyl propyl ketone	250 ppm, 875 mg/m ^{3}	None.
α-Methyl styrene	100 ppm, 485 mg/m ^{3}	100 ppm (30 min) from Pennsylvania Rules.
Morpholine	30 ppm, 105 mg/m ^{3}	20 ppm (15 min) from Pennsylvania Rules.
Mevinphos	0.03 ppm	0.5 ppm (30 min) from Pennsylvania Rules.
Naphthalene	15 ppm, 75 mg/m ^{3}	15 ppm (5 min) from Pennsylvania Rules.
Nickel carbonyl	None	0.04 ppm (5 min) from Pennsylvania Rules.
Nitrapyrin	20 mg/m ^{3}	None.
Nitric acid	4 ppm, 10 mg/m ^{3}	15 ppm (5 min) from Pennsylvania Rules.
Nitrobenzene	None	10 ppm (30 min) from Pennsylvania Rules.
Nitrogen dioxide	5 ppm (10 mg/m ^{3}) or 1 ppm (1.8 mg/m ^{3})	25 ppm (5 min) from Pennsylvania Rules.
Nitroglycerin	0.1 mg/m ^{3}	0.2 ppm (30 min) from Pennsylvania Rules.
Octachloro-naphthalene	0.3 mg/m ^{3}	None.
Octane	375 ppm, 1,800 mg/m ^{3}	500 ppm (30 min) from Pennsylvania Rules.
Oil mist, mineral	10 mg/m ^{3}	None.
Osmium tetroxide, as Os	0.0006 ppm, 0.006 mg/m ^{3}	None.
Oxalic acid	2 mg/m ^{3}	None.
Ozone	None	1 ppm (30 min) from Pennsylvania Rules.
Parathion	None	0.5 mg/m ^{3} (30 min) from Pennsylvania Rules.
Petaborane	0.015 ppm, 0.03 mg/m ^{3}	None.
Petane	750 ppm, 2,250 mg/m ^{3}	None.
Perchloroethylene	None	200 ppm (30 min) from Pennsylvania Rules.
Perchloryl fluoride	6 ppm, 28 mg/m ^{3}	None.
Phenyl ether vapor	2 ppm, 14 mg/m ^{3}	None.
Phenylhydrazine	10 ppm, 45 mg/m ^{3}	None.
Phorate	0.2 mg/m ^{3}	None.
Phosgene	None	1 ppm (5 min) from Pennsylvania Rules.
Phosphine	1 ppm, 1 mg/m ^{3}	1 ppm (30 min) from Pennsylvania Rules.
Phosphoric acid	3 mg/m ^{3}	None.
Phosphorus pentasulfide	3 mg/m ^{3}	None.
Phosphorus trichloride	0.5 ppm 3 mg/m ^{3}	None.
Phthalic anhydride	None	4 ppm (5 min) from Pennsylvania Rules.
Picloram	20 mg/m ^{3}	None.
Picric acid	0.3 mg/m ^{3}	None.
Propionic acid	15 ppm, 45 mg/m ^{3}	None.
n-Propyl acetate	250 ppm, 1,050 mg/m ^{3}	None.
Propyl alcohol	250 ppm, 625 mg/m ^{3}	400 ppm (30 min) from Pennsylvania Rules.
Propylene dichloride	110 ppm, 510 mg/m ^{3}	None.
Propylene glycol monomethyl ether	150 ppm, 540 mg/m ^{3}	None.
n-Propyl nitrate	40 ppm, 170 mg/m ^{3}	None.
Pyridine	None	10 ppm (30 min) from Pennsylvania Rules.
Resorcinol	20 ppm, 90 mg/m ^{3}	None.
Selenium compounds, as Se	None	0.3 mg/m ^{3} (30 min) from Pennsylvania Rules.
Sodium fluoracetate	0.15 mg/m ^{3}	None.
Styrene, monomer	100 ppm, 425 mg/m ^{3}	100 ppm (5 min) from Pennsylvania Rules.
Sulfotep (TEDP)	None	1 ppm (30 min) from Pennsylvania Rules.
Sulfur dioxide	5 ppm, 10 mg/m ^{3}	20 ppm (5 min) from Pennsylvania Rules.
Sulfuric acid	None	3 mg/m ^{3} (5 min) from Pennsylvania Rules.
Sulfuryl fluoride	10 ppm, 40 mg/m ^{3}	None.
Tantalum	10 mg/m ^{3}	None.
TEPP	None	1 mg/m ^{3} (30 min) from Pennsylvania Rules.
1,1,2,2-Tetra-chloroethane	None	10 ppm (30 min) from Pennsylvania Rules.
Tetrahydrofuran	250 ppm, 735 mg/m ^{3}	500 ppm (30 min) from Pennsylvania Rules.
Tin (inorganic compounds)	None	5 mg/m ^{3} (30 min) from Pennsylvania Rules.
Tin (organic compounds)	0.2 mg/m ^{3}	None.
Toluene	150 ppm, 560 mg/m ^{3}	600 ppm (30 min) from Pennsylvania Rules.
Toluene-2,4-diisocyanate	0.02 ppm, 0.15 mg/m ^{3}	0.02 ppm (5 min) from Pennsylvania Rules.
Trichloroethylene	200 ppm, 1,080 mg/m ^{3}	200 ppm (30 min) from Pennsylvania Rules.
1,1,2-Trichloro-1,2,2-trifluoroethane	1,250 ppm, 9,500 mg/m ^{3}	None.
Triethylamine	15 ppm, 60 mg/m ^{3}	100 ppm (30 min) from Pennsylvania Rules.
Trimethylamine	15 ppm, 36 mg/m ^{3}	None.
2,4,6-Trinitro-toluene	None	5 mg/m ^{3} (30 min) from Pennsylvania Rules.
Tungsten, as W		
Insoluble compounds	10 mg/m ^{3}	None.
Soluble compounds	3 mg/m ^{3}	None.
Turpentine	None	200 ppm (30 min) from Pennsylvania Rules.
Uranium, as U		
Insoluble compounds	0.06 mg/m ^{3}	None.
Vanadium compounds	None	0.5 mg/m ^{3} (30 min) from Pennsylvania Rules (V_2O_5 dust/fume).
Vinyl acetate	20 ppm, 60 mg/m ^{3}	None.
Vinyl chloride	5 ppm	500 ppm (5 min) from Pennsylvania Rules.

TABLE 9—CHANGES OF SHORT-TERM EXPOSURE LIMITS FOR COAL AND METAL/NONMETAL MINES.—Continued

Chemical	Proposed STEL	Current STEL
Vinyl toluene	100 ppm	400 ppm (5 min) from Pennsylvania Rules.
Wood dust		
Soft wood	10 mg/m ^{3}	None.
Xylene (o-, m-, p-isomers)	150 ppm, 655 mg/m ^{3}	300 ppm (30 min) from Pennsylvania Rules.
Zinc oxide fume	10 mg/m ^{3}	10 mg/m ^{3} (30 min) from Pennsylvania Rules.
Zirconium compounds, as Zr	10 mg/m ^{3}	None.

TABLE 10—CHANGES IN CURRENT EXPOSURE LIMITS AT METAL/NONMENTAL MINES ONLY

Chemical	Proposed PEL	Current PEL
Butane	TWA 800 ppm, 1,900 mg/m ^{3}	500 ppm, 1,200 mg/m ^{3}
1,1-Dichloromethane	TWA 200 ppm, 810 mg/m ^{3}	TWA 200 ppm, 320 mg/m ^{3}
Silica fused	0.1 mg/m ^{3}	10 mg/m ^{3}
Silica—quartz	0.1 mg/m ^{3}	% respirable quartz 10 mg/m ^{3}
Talc (containing no asbestos)	TWA 2.5 mg/m ^{3}, respirable dust.	% respirable quartz+2 TWA 20 mppcf
Tridymite	0.05 mg/m ^{3}	One-half the value calculated from the formula for quartz.

TABLE 11—CHANGES AND REDUCTIONS OF EXPOSURE LIMITS FOR SUBSTANCES ALREADY REGULATED AT COAL MINES

Chemical	Proposed PEL	Current PEL
Acetaldehyde	TWA 100 ppm, (180 mg/m ^{3})	TWA 20.0 ppm, (360 mg/m ^{3})
Acetic anhydride	Ceiling 5 ppm, 20 mg/m ^{3}	TWA 5 ppm, 20 mg/m ^{3}
Ammonia	TWA 25 ppm, 18 mg/m ^{3}	50 ppm, 35 mg/m ^{3}
1,1-Dichloroethane	TWA 200 ppm, 810 mg/m ^{3}	100 ppm, 400 mg/m ^{3}
Dichloroethyl ether	TWA 5 ppm, (30 mg/m ^{3})	Ceiling 15 ppm, (90 mg/m ^{3})
Disobutyl ketone	TWA 25 ppm, (250 mg/m ^{3})	TWA 50 ppm, (290 mg/m ^{3})
Fluorine	TWA 1 ppm, 2 mg/m ^{3}	TWA 0.1 ppm, 0.2 mg/m ^{3}
Furfuryl alcohol	TWA 10 ppm, (40 mg/m ^{3})	TWA 5 ppm, (20 mg/m ^{3})
Methyl cyclohexanol	TWA 50 ppm, (235 mg/m ^{3})	TWA 100 ppm, (470 mg/m ^{3})
Methyl cyclohexanone	TWA 50 ppm, (230 mg/m ^{3})	TWA 100 ppm, (460 mg/m ^{3})

TABLE 12.—CHEMICALS WHICH WOULD HAVE A NEW SKIN NOTATION—COAL AND METAL/NONMETAL MINES

Acetonitrile
Allyl glycidyl ether
n-Butyl alcohol
o-sec Butyl phenol
Captafol
Chlorpyrifos
Cyclohexanol
Cyclohexanone
DDT (Dichlorodiphenyl-trichloroethane)
Dichloropropene
Dicrotophos
Ethion
Fenamiphos
Fenthion
Furfural alcohol
Hexafluoroacetone
2-Hydroxypropyl acrylate
Isooctyl alcohol
Lindane
Manganese cyclopentadienyl tricarbonyl, as Mn
Mercury
2-Methoxyethyl acetate
Methyl alcohol
4,4'-Methylene bis(2-chloroaniline)
4,4'-Methylene dianiline
Phorate
Propyl alcohol
Thioglycolic acid
o-Tolidine
o-Toluidine

TABLE 12.—CHEMICALS WHICH WOULD HAVE A NEW SKIN NOTATION—COAL AND METAL/NONMETAL MINES—Continued

m-Toluidine
p-Toluidine
m-Xylene α,α'-diamine

TABLE 13.—CHEMICALS WHICH WILL BE DELETED FROM EXISTING REGULATIONS. NUISANCE DUSTS WOULD BE REGULATED UNDER RESPIRABLE DUST STANDARDS

Calcium carbonate—nuisance dust
Cellulose—nuisance dust
Cotton dust—TWA 1 mg/m^3
Emery—nuisance dust
Ethylene glycol, particulate—10 mg/m^3
Gypsum—nuisance dust
Kaolin—nuisance dust
Limestone—nuisance dust
Magnesite—nuisance dust
Marble—nuisance dust
Pentaerythritol—nuisance dust
Phenyl-ether-diphenyl mixture—1 ppm 7 mg/m^3
Plaster of Paris—nuisance dust

TABLE 13.—CHEMICALS WHICH WILL BE DELETED FROM EXISTING REGULATIONS. NUISANCE DUSTS WOULD BE REGULATED UNDER RESPIRABLE DUST STANDARDS—Continued

Polytetrafluoroethylene decomposition products—no TLV/sampling method provided
Rouge—nuisance dust
Starch—nuisance dust
Sucrose—nuisance dust
Titanium dioxide—nuisance dust
Vegetable oil mists—nuisance dust

TABLE 14.—SKIN NOTATIONS THAT WOULD BE DELETED FROM EXISTING REGULATIONS FOR BOTH METAL/NONMETAL AND COAL MINES

Acetonitrile
Allyl glycidyl ether
n-Butyl alcohol
Cyclohexanol
Cyclohexanone
DDT (Dichlorodiphenyl-trichloroethane)
Diproylene glycol methyl ether
Furfuryl alcohol
Hexachloroethane

TABLE 14.—SKIN NOTATIONS THAT WOULD BE DELETED FROM EXISTING REGULATIONS FOR BOTH METAL/NONMETAL AND COAL MINES—Continued

Hexafluoroacetone
Lindane
Methryl alcohol
Methyl isobutyl carbinol
Paraquat
Propyl alcohol
o-Toluidine
1,2,3-Tricholopropane
Triorthocresyl phosphate

TABLE 15.—EXISTING NAMES THAT HAVE BEEN CHANGED TO A NEW NAME IN THE PROPOSED PEL TABLE

Abate—see Temephos
2-Butanone—see Methyl ethyl ketone
1,2-Dibromoethane—see Ethylene dibromide
Dibrom—see Naled
1,2-Dichlorethane—see Ethylene dichloride
Diphenyl—see Biphenyl
Ethylene glycol monomethyl ether acetate—see 2-Methoxyethyl acetate
Fluorotrichloromethane—see Trichlorofluoromethane
2-Hexanone—see Methyl-n-butyl ketone
2-Heptanone—see Methyl-n-amyl ketone
Hexone—see Methyl isobutyl ketone
Mevinphos—see Phosdrin
Monomethyl aniline—see N-Methyl aniline
Monomethyl hydrazine—see Methyl hydrazine
Napatha (coal tar)—see Rubber solvent
2-Pentanone—see Methyl propyl ketone
Phosdrin—see Mevinphos
Pival—see Pindone
RDX—see Cyclonite
TEDP—see Sulfotep

TABLE 16.—SUBSTANCES WHICH WILL BE REGULATED AS CARCINOGENS FOR THE FIRST TIME FOR METAL/NONMETAL AND COAL MINES

Acrylamide
Acrylonitrile
Amitrol
Asbestos
Benzene
Benzo (a) pyrene
Beryllium and compounds (except welding)
Cadmium and compounds (except welding)
1,3 Butadiene
Chloroform
Chrysene
1,1-Dimethylhydrazine
Dimethyl sulfate
Ethyl acrylate
Ethylene dibromide
Ethylene dichloride
Ethylene oxide
Formaldehyde
Hexachlorobutadiene
Hexamethyl phosphoramide
Hydrazine
Lead chromate
Methyl hydrazine
Methylene chloride
4,4'-Methylene dianiline
Methyl iodide
2-Nitropropane

TABLE 16.—SUBSTANCES WHICH WILL BE REGULATED AS CARCINOGENS FOR THE FIRST TIME FOR METAL/NONMETAL AND COAL MINES—Continued

Perchloroethylene
N-Phenyl-β-naphthylamine
Propane sultone
Phenylhydrazine
Propylene imine
o-Tolidine
o-Toluidine
p-Toluidine
Vinyl bromide
Vinyl chloride
Vinyl cyclohexene dioxide
Xylidine
Zinc chromate, as Cr

TABLE 17.—SUBSTANCES WHICH WILL BE REGULATED AS CARCINOGENS FOR THE FIRST TIME FOR COAL MINES

bis (Chloromethyl) ether
Carbon tetrachloride
Ethylenimine
α-Naphthylamine
4,4'-Methylene bis(2-chloroaniline)
4-Dimethylaminoazobenzene

TABLE 18.—SUBSTANCES WHICH WILL BE REGULATED AS CARCINOGENS FOR THE FIRST TIME FOR METAL/NONMETAL. THESE SUBSTANCES NOT PROPOSED FOR COAL MINES BECAUSE THEY ARE PROCESSES FOUND ONLY IN METAL/NONMETAL MINING

Asbestos mining and milling
Antimony trioxide production
Arsenic trioxide production
Chromite ore processing
Nickel sulfide roasting
Vermiculite mining and milling where asbestos is present in concentrations greater than 1 percent in ore or concentrate.

Derivation Table

The following derivation table lists the section number of each standard in the proposed rule and the section number of the existing standard from which it is derived.

DERIVATION TABLE

New section	Old section
58.1	New
58.2	New
58.100	56.5001 and introductory text to 56/57.5005
	57.5001 and introductory text to 56/57.5005
58.200	56.5002
	57.5002
58.300	56.5005(c)
	57.5005(c)

DERIVATION TABLE—Continued

New section	Old section
58.401	56.5006
	57.5006
58.402	56.5006
	57.5006
58.403	New
58.404	New
58.405	New
58.450	New
58.500	56.5005 (a) & (b)
	57.5005 (a) & (b)
58.550	56.5005(b)
	57.5005(b)
58.600	56.20014
	57.20014
58.610	56.5010
	57.5010
58.620	56.5003
	57.5003
70.302	70.300
	70.300–1
71.302	New
72.1	New
72.2	New
72.100	70.305
	71.700
	75.301–2
72.200	71.701
72.300	New
72.400	New
72.500	70.300–1
	70.305
	70.305–1
72.600	New
72.610	New
72.620	New
72.630	70–400
	70–400–1
	70.400–2
	70–400–3
90.302	New

Distribution Table

The following distribution table lists the section number of each existing standard and the section number of the proposed standards that contain revised provisions derived from the corresponding existing section.

DISTRIBUTION TABLE

Old section	New section
56.5001	58.100
56.5002	58.200
56.5003	58.620
56.5005 (a) & (b)	58.500
56.5005(c)	58.300
56.5006	58.401
	58.402
56.5010	58.610
56.20014	58.600
57.5001	58.100
57.5002	58.200
57.5003	58.620
57.5005 (a) & (b)	58.500
	58.550
57.5005(c)	58.300
57.5006	58.401
	58.402
57.5010	58.610
57.20014	58.600
70.300	70.302
70.300–1	72.500
70.305	72.500
70.305–1	72.500

DISTRIBUTION TABLE—Continued

Old section	New section
70.400	70.630
70.400-1	70.630
70-400-2	70.630
70-400-3	70.630
71-700	72.100
71-701	72.200
75-301-2	72.100

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List of Subjects in 30 CFR Parts 56, 57, 58, 70, 71, 72, 75, and 90

Mine safety and health, Chemicals, Hazardous substances, Recordkeeping and recording requirements.

Accordingly, it is proposed to amend chapter I of title 30, Code of Federal Regulations as set forth below.

Dated: August 16, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

PART 56—[AMENDED]

A. It is proposed to amend subpart D, 30 CFR part 56, as follows:

1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811, 957 and 961.

§ 56.5001 [Removed]

2. Section 56.5001 is removed.

§ 56.5002 [Removed]

3. Section 56.5002 is removed.

§ 56.5003 [Removed]

4. Section 56.5003 is removed.

§ 56.5005 [Removed]

5. Section 56.5005 is removed.

§ 56.5006 [Removed]

6. Section 56.5006 is removed.

§ 56.5010 [Removed]

7. Section 56.5010 is removed.

§ 56.0014 [Removed]

8. Section 56.0014 is removed.

9. The undesignated center heading "Air Quality" is removed.

PART 57—[AMENDED]

B. It is proposed to amend subpart D, 30 CFR part 57, as follows:

1. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811, 957 and 961.

2. Section 57.5001 is removed.

§ 57.5002 [Removed]

3. Section 57.5002 is removed.

§ 57.5003 [Removed]

4. Section 57.5003 is removed.

§ 57.5005 [Removed]

5. Section 57.5005 is removed.

§ 57.5006 [Removed]

6. Section 57.5006 is removed.

§ 57.5010 [Removed]

7. Section 57.5010 is removed.

§ 57.20014 [Removed]

8. Section 57.20014 is removed.

9. The undesignated center headings "Air Quality—Surface and Underground" and the first heading "Air Quality—Underground Only" are removed.

C. It is proposed to add a new part 58 to subchapter N, 30 CFR chapter I to read as follows:

PART 58—HEALTH STANDARDS FOR AIR QUALITY, CHEMICAL SUBSTANCES, AND RESPIRATORY PROTECTION AT METAL/NONMETAL MINES

Subpart A—General

Sec.

Authority: 30 U.S.C. 811.

Subpart A—General

§ 58.1 Scope.

The health standards in this part apply to all metal and nonmetal mines.

§ 58.2 Definitions.

The following definitions apply to this part.

Access. The right to examine and copy records.

Confined space. A space that by design has restricted openings for entry and exit, an unfavorable atmosphere that could contain or produce dangerous air contaminants and is not intended for continuous occupancy.

Designated representative. Any individual or organization to whom a miner gives written authorization to exercise a right of access to records.

Permissible exposure limit (PEL). The time-weighted average (TWA), the short-term exposure limit (STEL), the ceiling exposure limit (ceiling) for an airborne substance, or the mixed exposure limit (MEL) for airborne substances.

Qualitative fit test. An assessment of the adequacy of respirator fit by determining whether an individual wearing the respirator can detect the odor, taste, or irritation of a contaminant introduced into the vicinity of the wearer's head.

Quantitative fit test. An assessment of the adequacy of respirator fit by numerically measuring concentrations of a test agent inside and outside the facepiece simultaneously. The ratio of

the two measurements is an index of leakage of the seal between the respirator facepiece and the wearer's face.

Respirable dust. The fraction of airborne dust passing a size-selector with the following characteristics:

Aerodynamic diameter (μm)	Percent passing selector
<2	90
2.5	75
3.5	50
5.0	25
10	0

For non-coal dust, this is airborne dust that MSHA collects by a sampling device with a 10-mm nylon cyclone operated at a flow rate of 1.7 liters per minute. For coal dust, this is airborne dust that MSHA collects by a sampling device with a 10-mm nylon cyclone operated at a flow rate of 2.0 liters per minute. The concentration of coal dust will be multiplied by the conversion factor of 1.38.

Respirator protection factor. A measure of the degree of protection provided by a respirator to the wearer.

Subpart B—Air Quality

§ 58.100 Control of exposure to airborne substances.

(a) *Time-weighted average (8 hours-[TWA_8].* For any workday, 8 hours or less in length, a miner's exposure to an airborne substance shall not exceed the time-weighted average listed in Table B–1. Exposure shall be calculated by the following formula:

$$\text{Exposure} = \frac{(C_1 \times T_1) + (C_2 \times T_2) + \ldots (C_n \times TC_n)}{8 \text{ hours}}$$

Where $C_1, C_2, \ldots C_n$ is the concentration of the airborne substance as measured by sample "1", sample "2", through the last sample, $T_1, T_2, \ldots T_n$ is the duration in minutes of the exposure at C_1, C_2, and any other C_n.

(b) *Time-weighted average (novel schedule)—$TWAC_{NS}$.* For workdays longer than 8 hours, full shift sampling shall be conducted and exposure calculated by the following formula:

$$\text{Exposure} = \frac{(C_1 \times T_1) + (C_2 \times T_2) + \ldots (Cn \times T_n)}{\text{Total Time}}$$

Where $C_1, C_2, \ldots C_n$ is the concentration of the airborne substance as measured by sample "1," sample "2," through the last sample, $T_1, T_2, \ldots T_n$ is the duration in minutes of the exposure at C_1, C_2, and any other C_n. The miners exposure to an airborne substance listed in Table B–1 shall not exceed the TWA_{NS} as calculated by the following formula:

$$\text{TWA (Novel Schedule)} = \text{TWA (as listed in Table B–1)} \times \frac{8 \text{ hours}}{\text{Total time sampled.}}$$

(c) *Short-term exposure limit (STEL) and ceiling limit (C).* A miner's exposure to an airborne substance shall not exceed the short-term exposure limit or ceiling limit (designated by "C") listed in Table B–1. The STEL is a 15-minute time-weighted exposure. If the concentration of an airborne substance exceeds the STEL or ceiling, the mine operator shall take immediate corrective action in accordance with paragraph (e) of this section.

(d) *Mixed exposure limit (MEL).* A miner's combined exposure to two or more airborne substances that act upon the same organ system shall not exceed 1.0 as determined by this formula:

$$\text{Exposure} = \frac{C_a}{PEL_a} + \frac{C_b}{PEL_b} + \ldots + \frac{C_n}{PEL_n}$$

"C" is the concentration of each substance. The MEL is the TWA_8, TWA_{NS}, short-term exposure limit, or ceiling for each substance. Time-weighted averages and short-term exposure limits are not to be mixed in computing exposure.

(e) *Means of control.* (1) The mine operator shall use feasible engineering or administrative controls to maintain exposure of all miners at or below the permissible exposure limits (PELs) in this section. When appropriate controls do not reduce exposure to the PEL, they shall be used to reduce exposure as low as feasible and supplemented with respiratory protection.

(2) The following factors shall be used to determine whether an engineering or administrative control is feasible:

(i) Nature and extent of the overexposure.

(ii) The demonstrated effectiveness of available technology.

(iii) Whether committed resources would be wholly out of proportion to the expected results.

(3) Respiratory protection shall be used when—

(i) The concentration of an airborne substance exceeds the PEL in areas where controls are being established;

(ii) Controls to reduce exposure to the PEL are not feasible; or

(iii) Occasional entry into hazardous atmospheres is required to perform maintenance, investigation, or emergency cleanup.

(f) *Skin absorption.* Whenever a miner could have contact with any airborne substance designated by "Skin" in Table B–1 at levels above the PEL, personal protection shall be provided and used to prevent absorption through the skin. Direct skin contract with these substances in a nonairborne form shall also be prevented through use of provided personal protection.

TABLE B–1—PERMISSIBLE EXPOSURE LIMITS

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Common gases:							
Ammonia—BO0875000	25	18	35	27			
Carbon dioxide—FF6400000	5,000	9,000	30,000	54,000			
Carbon monoxide—FG3500000	35	40	200	229			
Hydrogen sulfide—MX1225000	10	14	15	21			
Nitric oxide—QX0525000	25	30					
Nitrogen dioxide—QW9800000	3 or	6	5	10			
			1	1.8			
Sulfur dioxide—WS4550000	2	5	5	10			

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Common dusts:							
Cristobalite—VV7325000		0.05, Respirable dust					
Quartz—VV7330000		0.1, Respirable dust					
Tridymite—VV7335000		0.05, Respirable dust					
Respirable mine dust		5, Respirable dust (PELs for substances in the respirable mine dust shall also be met).					
Acetaldehyde—AB1925000	100	180	150	270			
Acetic acid—AF1225000	10	25	15	37			
Acetic anhydride—AK1925000					5	20	
Acetone—AL3150000	750	1,800	1,000	2,400			
Acetonitrile—AL7700000	40	70	60	105			X
2-Acetylaminofluorene—AB9450000—Restricted use, see § 58.401.							
Acetylene—AO9600000—Simple asphyxiant, see § 58.300(b).							
Acetylene tetrabromide—KI8225000	1	14					
Acetylsalicylic acid—VO0700000		5					
Acrolein—AS1050000	0.1	0.25	0.3	0.8			
Acrylamide—AS3325000—Restricted use, see also § 58.403		0.03					X
Acrylic acid—AS4375000	2	6					
Acrylonitrile—AT5250000—Restricted use, see also § 58.403.	2	4.5					X
Aldrin—IO2100000		0.25					X
Allyl alcohol—BA5075000	2	5	4	10			X
Allyl chloride—UC7350000	1	3	2	6			
Allyl glycidyl ether—RR0875000	5	22	10	44			X
Allyl propyl disulfide—JO0350000	2	12	3	18			
Aluminum:							
Metal & Oxide		10					
Pyro powders		5					
Welding fumes		5					
Soluble salts		2					
Alkyls (not otherwise classified)		2					
4-Aminodiphenyl—DU8925000—Restricted use, see § 58.401.							X
2-Aminopyridine—US1575000	0.5	2					
Amitrole—XZ3650000—Restricted use, see also § 58.403		0.2					
Ammonium chloride fume—BP4550000		10		20			
Ammonium perfluorooctanoate—RH0782000		0.1					
Ammonium sulfamate—WO6125000		10					
n-Amyl acetate—AJ1925000	100	525					
sec-Amyl acetate—AJ2100000	125	650					
Aniline & homologues	2	8					X
Anisidine (o-,p-isomers)—BZ5410000, BZ5450000	0.1	0.5					X
Antimony and compounds (as Sb)		0.5					
Antimony trioxide Production (as Sb)—Restricted use, see also § 58.404.							
ANTU—YT9275000		0.3					
Argon—CF2300000—Simple asphyxiant, see § 58.300(b)							
Arsenic & soluble compounds (as As)		0.2					
Arsenic trioxide production—Restricted use, see § 58.404							
Arsine—CG6475000	0.05	0.2					
Asbestos [1]—Restricted use, see also §§ 58.404 and 58.405		.2 fiber/cc		1 fiber/cc			
Asphalt (petroleum) fumes—CI9900000		5					
Atrazine—XY5600000		5					
Azinphos-methyl—TE1925000		0.2					X
Barium, soluble compounds (as Ba)		0.5					
Barium sulfate—CR0600000		10					
Benomyl—DD6475000	0.8	10					
Benzene—CY1400000—Restricted use, see also § 58.403		1		5			
Benzidine—DC9625000—Restricted use, see also § 58.401							X
Benzoyl peroxide—DM8575000		5					
Benzo(a)pyrene—DJ3675000—Restricted use, see § 58.401							
Benzyl chloride—XS8925000	1	5					
Beryllium and compounds—Restricted use, see also § 58.404.		0.002					
Biphenyl—DU8050000	0.2	1					
Bismuth telluride, Undoped—EB3110000		10					
Bismuth telluride, Se-doped	5						
Borates, tetra, sodium salts all forms		5					
Boron oxide—ED7900000		10					
Boron tribromide—ED7400000					1	10	
Boron trifluoride—ED2275000						1 3	
Bromacil—YQ9100000	1	10					
Bromine—EF9100000	0.1	0.7	0.3	2			

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Bromine pentafluoride—EF9350000	0.1	0.7					
Bromoform—PB5600000	0.5	5					X
1,3-Butadiene—EI9275000—Restricted use, see also § 58.403.	10	22					
Butane—EI4200000	800	1,900					
2-Butoxyethanol—KJ8575000	25	120					X
n-Butyl acetate—AF7350000	150	710	200	950			
sec-Butyl acetate—AF7380000	200	950					
tert-Butyl acetate—AF7400000	200	950					
Butyl acrylate—UD3150000	10	55					
n-Butyl alcohol—EO1400000					50	150	X
sec-Butyl alcohol—EO1750000	100	305					
tert-Butyl alcohol—EO1925000	100	300	150	450			
Butylamine—EO2975000					5	15	X
tert-Butyl chromate (as CrO_3)—GB2900000						0.1	X
n-Butyl glycidyl ether—TX4200000	25	135					
n-Butyl lactate—OD4025000	5	25					
Butyl mercaptan—EK6300000	0.5	1.5					
o-sec-Butylphenol—SJ8920000	5	30					X
p-tert-Butyltoluene—SX8400000	10	60	20	120			
Cadmium and compounds—Restricted use, see also § 58.404.		.010					
	or						
		.005					
Calcium cyanamide—GS6000000		0.5					
Calcium (hydroxide and oxide forms)—EW2800000, EW3100000.		5					
Camphor, synthetic—EX1225000		2					
Caprolactam—CM3675000:							
Dust		1		3			
Vapor	5	20	10	40			
Captafol—GW4905000		0.1					X
Captan—GW5075000		5					
Carbaryl—FC5950000		5					
Carbofuran—FB9450000		0.1					
Carbon black—FF5800000		3.5					
Carbon disulfide—FF6650000	4	12	12	36			X
Carbon tetrabromide—FG4725000	0.1	1.4	0.3				
Carbon tetrachloride—FG4900000—Restricted use, see also § 58.402.	2	12.6					X
Carbonyl fluoride—FG6125000	2	5	5	15			
Catechol—UX1050000	5	20					X
Cesium hydroxide—FK9800000		2					
Chlordane—PB9800000		0.5					X
Chlorinated camphene—XW5250000		0.5		1			X
Chlorinated diphenyl oxide—KO4200000		0.5					
Chlorine—FO2100000	0.5	1.5	1	3			
Chlorine dioxide—FO3000000	0.1	0.3	0.3	0.9			
Chlorine trifluoride—FO2800000					0.1	0.4	
Chloroacetaldehyde—AB2450000					1	3	
Chloroacetone—UC0700000							
α-Chloroacetophenone—AM6300000	0.05	0.3					
Chloroacetyl chloride—AO6475000	0.05	0.2					
Chlorobenzene—CZ0175000	75	350					
o-Chlorobenzylidene malononitrile—OO3675000					0.05	0.4	X
Chlorobromomethane—PA5250000	200	1,050					
Chlorodifluoromethane—PA6390000	1,000	3,500					
Chlorodiphenyl:							
(42% Chlorine)—TQ1356000	1						X
(54% Chlorine)—TQ1360000	0.5						X
Chloroform—FS9100000—Restricted use, see also § 58.403	2	9.8					
bis(Chloromethyl) ether—KN1575000—Restricted use, see also § 58.401.	0.001	0.005					
Chloromethyl methyl ether—KN6650000—Restricted use, see also § 58.401.							
1-Chloro-1-nitropropane—TX5075000	2	10					
Chloropentafluoroethane—KH7877500	1,000	6,320					
Chloropicrin—PB6300000	0.1	0.7					
β-Chloroprene—EI9625000	10	35					X
o-Chlorostyrene—WL4160000	50	285	75	430			
o-Chlorotoluene—XS9000000	50	250	75	375			
Chlorpyrifos—TF6300000		0.2		0.6			X
Chromite ore processing (as Cr)—Restricted use, see also § 58.404.		0.5					
Chromium metal—GB4200000		0.5					
Chromium (II) compounds (as Cr)—GB6260000		0.5					
Chromium (III) compounds (as Cr)—GB6261000		0.5					
Chromium (VI) compounds (as Cr)—GB6262000		0.05					
Chromyl chloride—GB5775000	0.025	0.15					

TABLE B–1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Chrysene—GC0700000—Restricted use, see § 58.401							
Clopidol—UU7711500		10					
Coal dust—GF8281000—If >5% quartz, use 10 divided by % quartz.		2					
Coal tar pitch volatiles (as benzene solubles)—GF8655000—Restricted use, see also § 58.404.		0.2					
Cobalt metal, dust and fume (as Co)		0.05					
Cobalt carbonyl—GG0300000		0.1					
Cobalt hydrocarbonyl (as Co)—GG0900000		0.1					
Copper:							
Fume		0.2					
Dusts and mists (as Cu)		1					
Cresol (all isomers)—GO5950000	5	22					X
Crotonaldehyde—GP9499000	2	6					
Crufomate—TB3850000		5					
Cumene—GR8575000	50	245					X
Cyanamide—GS5950000		2					
Cyanides (as CN)		5					X
Cyanogen—GT1925000	10	20					
Cyanogen chloride—GT2275000					0.3	0.6	
Cyclohexane—GU6300000	300	1,050					
Cyclohexanol—GV7875000	50	200					X
Cyclohexanone—GW1050000	25	100					X
Cyclohexene—GW2500000	300	1,015					
Cyclohexylamine—GX0700000	10	40					
Cyclonite—XY9450000		1.5					X
Cyclopentadiene—GY1000000	75	200					
Cyclopentane—GY2390000	600	1,720					
Cyhexatin—WH8750000		5					
2,4–D—AG6825000		10					
DDT (Dichlorodiphenyl-trichloroethane)—KJ3325000		1					X
Decaborane—HD1400000	0.05	0.3	0.15	0.9			X
Demeton—TF3150000	0.01	0.1					X
Diacetone alcohol—SA9100000	50	240					
Diatomaceous earth (uncalcined)—HL8600000		6					
Diazinon—TF3325000		0.1					X
Diazomethane—PA7000000	0.2	0.4					
Diborane—HQ9275000	0.1	0.1					
2-N-Dibutylaminoethanol—KK3850000	2	14					X
Dibutyl phenyl phosphate—TB9626600	0.3	3.5					X
Dibutyl phosphate—TB9605000	1	5	2	10			
Dibutyl phthalate—TI0875000		5					
Dichloroacetylene—AP1060000					0.1	0.4	
o-Dichlorobenzene—CZ4500000					50	300	
p-Dichlorobenzene—CZ4550000	75	450	110	675			
3,3'-Dichlorobenzidine—DD0525000—Restricted use, see § 58.401.							X
Dichlorodifluoromethane—PA8200000	1,000	4,950					
1,3-Dichloro-5,5-dimethyl hydantoin—MU0700000		0.2		0.4			
1,1-Dichloroethane—KI0175000	200	810	250	1,010			
1,2-Dichloroethylene—KV9360000	200	790					
Dichloroethyl ether	5	30	10	60			X
Dichlorofluoromethane—PA8400000	10	40					
1,1-Dichloro-1-nitroethane—KI1050000	2	10					
Dichloropropene—UC8310000	1	5					X
2,2-Dichloropropionic acid—UF0690000	1	6					
Dichlorotetrafluoroethane—KI1101000	1,000	7,000					
Dichlorvos—TC0350000	0.1	1					X
Dicrotophos—TC8500000		0.25					X
Dicyclopentadiene—PC1050000	5	30					
Dicyclopentadienyl iron—LK0700000		10					
Dieldrin—IO1750000		0.25					X
Diethanolamine—KL2975000	3	15					
Diethylamine—HZ8750000	10	30	25	75			X
2-Diethylaminoethanol—KK5075000	10	50					X
Diethylene triamine—IE1225000	1	4					X
Diethyl ketone—SA8050000	200	705					
Diethyl phthalate—TI1050000		5					
Difluorodibromomethane—PA7525000	100	860					
Diglycidyl ether—KN2350000	0.1	0.5					
Diisobutyl ketone—MJ5775000	25	150					
Diisopropylamine—IM4025000	5	20					X
Dimethyl acetamide—AB7700000	10	35					X
Dimethylamine—IP8750000	10	18					
4-Dimethylaminoazobenzene—BX7350000—Restricted use, see § 58.401.							
N,N-Dimethylaniline—BX4725000	5	25	10	50			X

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Dimethyl carbamoyl chloride—FD4200000—Restricted use, see § 58.401.							
Dimethylformamide—LQ2100000	10	30					X
1,1-Dimethylhydrazine—MU2450000—Restricted use, see also § 58.403.	0.5	1					X
Dimethylphthalate—TI1575000		5					
Dimethyl sulfate—WS8225000—Restricted use, see also § 58.403.	0.1	0.5					X
Dinitolmide—XS4200000		5					
Dinitrobenzene (all isomers)	0.15	1					X
Dinitro-o-cresol—GO96525000		0.2					X
Dinitrotoluene		1.5					X
Dioxane—JG8225000	25	90					X
Dioxathion—TE3350000		0.2					X
Diphenylamine—JJ7800000		10					
Dipropylene glycol methyl ether—JM1575000	100	600	150	900			X
Dipropyl ketone—MJ5600000	50	235					
Diquat—JM5690000		0.5					
Di-sec-octyl phthalate—TI0350000		5		10			
Disulfiram—JO1225000		2					
Disulfoton—TD9275000		0.1					X
2,6-Di-tert-butyl-p-cresol—GO7875000		10					
Diuron—YS8925000		10					
Divinyl benzene—CZ9450000	10	50					
Endosulfan—RB9275000		0.1					X
Endrin—IO1575000		0.1					X
Enflurane—KN6800000	75	575					
Epichlorohydrin—TX4900000	2	8					X
EPN—TB1925000		0.5					X
Ethane—KH3800000—Simple asphyxiant, see § 58.300(b)							
Ethanolamine—KJ5775000	3	8	6	15			
Ethion—TE4550000		0.4					X
2-Ethoxyethanol—KK8050000	5	19					X
2-Ethoxyethyl acetate—KK8225000	5	27					X
Ethyl acetate—AH5425000	400	1,400					
Ethyl acrylate—AT0700000—Restricted use, see also § 58.403.	5	20	15	61			X
Ethyl alcohol—KQ6300000	1,000	1,900					
Ethylamine—KH2100000	10	18					
Ethyl amyl ketone—MJ7350000	25	130					
Ethyl benzene—DA0700000	100	435	125	545			
Ethyl bromide—KH6475000	200	890	250	1,110			
Ethyl butyl ketone—MJ5250000	50	230					
Ethyl chloride—KH7525000	1,000	2,600					
Ethylene—KU5340000—Simple asphyxiant, see § 58.300(b)							
Ethylene chlorohydrin—KK0875000					1	3	X
Ethylenediamine—KH8575000	10	25					
Ethylene dibromide—KH9275000—Restricted use, see also § 58.401.							X
Ethylene dichloride—KI0525000—Restricted use, see also § 58.403.	1	4	2	8			
Ethylene glycol, vapor—KW2975000					50	125	
Ethylene glycol dinitrate—KW5600000				0.1			X
Ethylene oxide—KX2450000—Restricted use, see also § 58.403.	1	2	5				
Ethylenimine—KX5075000—Restricted use, see also § 58.402.	0.5	1					X
Ethyl ether—KI5775000	400	1,200	500	1,500			
Ethyl formate—LQ8400000	100	300					
Ethylidene norbornene—RB9450000					5	25	
Ethyl mercaptan—KI9625000	0.5	1					
N-Ethylmorpholine—QE4025000	5	23					X
Ethyl silicate—VV9450000	10	85					
Fenamiphos—TB3675000		0.1					X
Fensulfothion—TF3850000		0.1					
Fenthion—TF9625000		0.2					X
Ferbam—NO8750000		10					
Ferrovanadium dust—LK2900000		1		3			
Fibrous glass dust—LK3651000		10					
Fluorides (as F)		2.5					
Fluorine—LM6475000	1	2	2				
Fonofos—TA5950000		0.1					X
Formaldehyde—LP8925000—Restricted use, see also § 58.403.	1	1.5	2	3			
Formamide—LQ0525000	10	15					X
Formic acid—LQ4900000	5	9	10	18			
Furfural—LT7000000	2	8					X
Furfuryl alcohol—LU9100000	10	40	15	60			X

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Gasoline—LX3300000	300	900	500	1,500			
Germanium tetrahydride—LY4900000	0.2	0.6					
Glutaraldehyde—MA2450000					0.2	0.8	
Glycerin (mist)—MA8050000		10					
Glycidol—UB4375000	25	75					
Graphite (all forms)—MD9659600		2, Respirable dust					
Hafnium—MG4600000		0.5					
Halothane—KH6550000	50	400					
Helium—MH6520000—Simple asphyxiant, see § 58.300(b)							
Heptachlor—PC0700000		0.5					X
Heptane (n-Heptane)—MI7700000	400	1,600	500	2,000			
Hexachlorobutadiene—EJ0700000—Restricted use, see also § 58.403.	0.02	0.24					X
Hexachlorocyclopentadiene—GY1225000	0.01	0.1					
Hexachloroethane—KI4025000	1	10					
Hexachloronaphthalene—QJ7350000		0.2					X
Hexafluoroacetone—UC2450000	0.1	0.7					X
Hexamethylene diisocynate—MO1740000	0.005	0.035					
Hexamethyl phosphoramide—TD0875000—Restricted use, see § 58.401.							X
Hexane:							
n-Hexane—MN9275000	50	180					
other isomers—MO3860000	500	1,800	1,000	3,600			
sec-Hexyl acetate—SA7525000	50	300					
Hexylene glycol—SA0810000					25	125	
Hydrazine—MU7175000—Restricted use, see also § 58.403	0.1	0.1					X
Hydrogen—MW8900000—Simple asphyxiant, see § 58.300(b).							
Hydrogenated terphenyls—WZ6535000	0.5	5					
Hydrogen bromide—MW3850000					3	10	
Hydrogen chloride—MW9610000, MW9620000					5	7	
Hydrogen cyanide—MW6825000					10	10	X
Hydrogen fluoride (as F)—MW7875000					3	2.5	
Hydrogen peroxide—MX0900000	1	1.4					
Hydrogen selenide (as Se)—MX1050000	0.05	0.2					
Hydroquinone—MX3500000		2					
2-Hydroxypropyl acrylate—AT1925000	0.5	3					X
Indene—NK8225000	10	45					
Indium & compounds (as In)		0.1					
Iodine—NN1575000					0.1	1	
Iodoform—PB7000000	0.6	10					
Iron oxide fume (Fe_2O_3) (as Fe)—NO7400000		5					
Iron pentacarbonyl (as Fe)—NO4900000	0.1	0.8	0.2	1.6			
Iron salts, soluble (as Fe)		1					
Isoamyl acetate—NS9800000	100	525					
Isoamyl alcohol—EL5425000	100	360	125	450			
Isobutyl acetate—AI4025000	150	700					
Isobutyl alcohol—NP9625000	50	150					
Isooctyl alcohol—NS7700000	50	270					X
Isophorone—GW7700000					5	25	
Isophorone diisocyanate—NQ9370000	0.005	0.045	0.02				X
Isopropoxyethanol—KL5075000	25	105					
Isopropyl acetate—AI4930000	250	950	310	1,185			
Isopropyl alcohol—NT8050000	400	980	500	1,225			
Isopropylamine—NT8400000	5	12	10	24			
N-Isopropylaniline—BY4200000	2	10					X
Isopropyl ether—TZ5425000	500	2,100					
Isopropyl glycidyl ether—TZ3500000	50	240	75	360			
Ketene—OA7700000	0.5	0.9	1.5	3			
Lead, inorganic, dusts and fumes (as Pb)		0.15					
Lead arsenate (as $Pb_3(AsO_4)_2$)—CG0990000		0.15					
Lead chromate (as Cr)—GB2975000—Restricted use, see also § 58.403.		0.05					
Lindane—GV4900000		0.5					X
Lithium hydride—OJ6300000		0.025					
L.P.G. (liquified petroleum gas)—SE7545000	1,000	1,800					
Magnesium oxide fume—OM3850000		10					
Malathion—WM8400000		10					X
Maleic anhydride—ON3675000	0.25	1					
Manganese (as Mn) Dust and compounds Fume		5					
		1		3			
Manganese cyclopentadienyl tricarbonyl (as Mn)—OO9720000.		0.1					X
Mercury (as Hg):							
Alkyl compounds	0.01		0.03				X
All forms except alkyl Vapor	0.05						X
Aryl and inorganic compounds	0.1						X
Mesityl oxide—SB4200000	15	60	25	100			

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Methacrylic acid—OZ2975000	20	70					X
Methane—PA1490000—Simple asphyxiant, see § 58.300(b)							
Methomyl—AK2975000		2.5					
Methoxychlor—KJ3675000		10					
2-Methoxyethanol—KL5775000	5	16					X
2-Methoxyethyl acetate—KL5950000	5	24					X
4-Methoxyphenol—SL7700000		5					
Methyl acetate—AI9100000	200	610	250	760			
Methyl acetylene—UK4250000	1,000	1,650					
Methyl acetylene-propadiene mixture (MAPP)—UK4920000	1,000	1,800	1,250	2,250			
Methyl acrylate—AT2800000	10	35					X
Methylacrylonitrile—UD1400000	1	3					X
Methylal—PA8750000	1,000	3,100					
Methyl alcohol—PC1400000	200	260	250	310			X
Methylamine—PF6300000	10	12					
Methyl n-amyl ketone—MJ5075000	50	235					
N-Methyl aniline—BY4550000	0.5	2					X
Methyl bromide—PA4900000	5	20					X
Methyl n-butyl ketone—MP1400000	5	20					
Methyl chloride—PA6300000	50	105	100	205			
Methyl chloroform—KJ2975000	350	1,900	450	2,450			
Methyl 2-cyanoacrylate—AS7000000	2	8	4	16			
Methylcyclohexane—GV6125000	400	1,600					
Methylcyclohexanol—GW0175000	50	235					
o-Methylcyclohexanone—GW1750000	50	230	75	345			X
2-Methylcyclopentadienyl manganese tricarbonyl (as Mn)—OP1450000.		0.2					X
Methyl demeton—TG1760000		0.5					X
Methylene bisphenyl isocyanate—NQ9350000	0.005	0.055					
Methylene chloride—PA8050000—Restricted use, see also § 58.403.	50	175	500	1,740			
4,4'-Methylene bis(2-chloroaniline)—CY1050000—Restricted use, see also § 58.402.	0.02	0.22					X
Methylene bis(4-cyclo-hexylisocyanate)—NQ9250000	0.005	0.055					
4,4'-Methylene dianiline—BY5425000—Restricted use, see also § 58.403.	0.1	0.8					X
Methyl ethyl ketone—EL6475000	200	590	300	885			
Methyl ethyl ketone peroxide—EL9450000					0.2	1.5	
Methyl formate—LQ8925000	100	250	150	375			
Methyl hydrazine—MV5600000—Restricted use, see also § 58.403.					0.5	0.35	X
Methyl iodide—PA9450000—Restricted use, see also § 58.403.	2	10					X
Methyl isoamyl ketone—MP3850000	50	240					
Methyl isobutyl carbinol—SA7350000	25	100	40	165			X
Methyl isobutyl ketone—SA9275000	50	205	75	300			
Methyl isocyanate—NQ9450000	0.02	0.05					X
Methyl isopropyl ketone—EL9100000	200	705					
Methyl mercaptan—PB4375000	0.5	1					
Methyl methacrylate—OZ5075000	100	410					
Methyl parathion—TG0175000		0.2					X
Methyl propyl ketone—SA7875000	200	700	250	875			
Methyl silicate—VV9800000	1	6					
α-Methyl styrene—WL5075300	50	240	100	485			
Metribuzin—XZ2990000		5					
Mevinphos—GQ5250000	0.01	0.1	0.03	0.3			X
Mica—VV8760000		3, Respirable dust					
Mineral wool fiber		10					
Molybdenum (as Mo):							
Soluble compounds		5					
Insoluble compounds		10					
Monocroptophos—TC4375000		0.25					
Morpholine—QD6475000	20	70	30	105			X
Naled—TB9450000		3					X
Naptha (Coal Tar)—DE3030000	100	400					
Naphthalene—QJ0525000		10	50	15	75		
α-Naphthylamine—QM1400000—Restricted use, see § 58.401.							
β-Naphthylamine—QM2100000—Restricted use, see § 58.401.							
Neon—QP4450000—Simple asphyxiant, see § 58.300(b)							
Nickel:							
Metal—QR5950000		1					
Soluble compounds (as Ni)		0.1					
Nickel carbonyl (as Ni)—QR6300000	0.001	0.007					
Nickel sulfide roasting, fume and dust (as Ni)—Restricted use, see § 58.404.		1					
Nicotine—Q52500000		0.5					X

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Nitrapyrin—US7525000		10		20			
Nitric acid—QU5775000	2	5	4	10			
p-Nitroaniline—BY7000000		3					X
Nitrobenzene—DA6475000	1	5					X
p-Nitrochlorobenzene—CZ1050000	0.1	0.6					X
4-Nitrodiphenyl—DV5600000—Restricted use, see § 58.401							
Nitroethane—KI5600000	100	310					
Nitrogen—QW9700000—Simple asphyxiant, see § 58.300(b)							
Nitrogen trifluoride—QX1925000	10	29					
Nitroglycerin—QX2100000				0.1			X
Nitromethane—PA9800000	100	250					
1-Nitropropane—TZ5075000	25	90					
2-Nitropropane—TZ5250000—Restricted use, see also § 58.403.	10	35					
N-Nitrosodimethylamine—IQ0525000—Restricted use, see § 58.401.							X
Nitrotoluene (o-,m-,p-isomers)—XT3150000, XT2975000, XT3325000.	2	11					X
Nitrous oxide—QX1350000	50	91					
Nonane—RA6115000	200	1,050					
Octachloronaphthalene—QK0250000		0.1		0.3			X
Octane—RG8400000	300	1,450	375	1,800			
Oil mist, mineral—PY8030000		5		10			
Osmium tetroxide (as Os)—RN1140000	0.0002	0.002	0.0006	0.006			
Oxalic acid—RO2450000		1		2			
Oxygen difluoride—RS2100000					0.05	0.1	
Ozone—RS8225000					0.1	0.2	
Paraffin wax fume—RV0350000		2					
Paraquat, respirable dust—DW1960000		0.1					X
Parathion—TF4550000		0.1					X
Pentaborane—RY8925000	0.005	0.01	0.015	0.03			
Pentachloronaphthalene—QK0300000		0.5					X
Pentachlorophenol—SM6300000		0.5					X
Pentane—RZ9450000	600	1,800	750	2,250			
Perchloroethylene—KX3850000—Restricted use, see also § 58.403.	25	170					
Perchloromethyl mercaptan—PB0370000	0.1	0.8					
Perchloryl fluoride—SD1925000	3	14	6	28			
Perlite—SD5254000		10					
Phenol—SJ3325000	5	19					X
Phenothiazine—SN5075000		5					X
N-Phenyl-β-naphthylamine—QM4550000—Restricted use, see § 58.401.							
p-Phenylene diamine—SS8050000		0.1					X
Phenyl ether vapor—KN8970000	1	7	2	14			
Phenyl glycidyl ether—TZ3675000	1	6					
Phenylhydrazine—MV8925000—Restricted use, see also § 58.403.	5	20	10	45			X
Phenyl mercaptan—DC0525000	0.5	2					
Phenylphosphine—SZ2100000					0.05	0.25	
Phorate—TD9450000		0.05		0.2			X
Phosgene—SY5600000	0.1	0.4					
Phosphine—SY7525000	0.3	0.4	1	1			
Phosphoric acid—TB6300000		1		3			
Phosphorus (yellow)—TH3500000		0.1					
Phosphorus oxychloride—TH4897000	0.1	0.6					
Phosphorus pentachloride—TB6125000	0.1	1					
Phosphorus pentasulfide—TH4375000		1		3			
Phosphorus trichloride—TH3675000	0.2	1.5	0.5	3			
Phthalic anhydride—TI3150000	1	6					
m-Phthalodinitrile—CZ1900000		5					
Picloram—TJ7525000		10		20			
Picric acid—TJ7875000		0.1		0.3			X
Pindone—NK6300000		0.1					
Piperazine dihydrochloride—TL4025000		5					
Platinum:							
Metal—TP2160000—		1					
Soluable salts (as Pt)		0.002					
Portland cement—VV8770000		10					
Potassium hydroxide—TT2100000						2	
Propane—TX2275000—Simple asphyxiant, see § 58.300(b)							
Propane sultone—RP5425000—Restricted use, see § 58.401.							
Propargyl alcohol—UK5075000	1	2					X
β-Propiolactone—RQ7350000—Restricted use, see also § 58.402.	0.5	1.5					
Propionic acid—UE5950000	10	30					
Propoxur—FC3150000		0.5					

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
n-Propyl acetate—AJ3675000	200	840	250	1,050			
Propyl alcohol—UH8225000	200	500	250	625			
Propylene—UC6740000—Simple asphyxiant, see § 58.300(b).							
Propylene dichloride—TX9625000	75	350	110	510			
Propylene glycol dinitrate—TY6300000	0.05	0.3					X
Propylene glycol monomethyl ether	100	360	150	540			
Propylene imine—CM8050000—Restricted use, see also § 58.403.	2	5					X
Propylene oxide—TZ2975000	20	50					
n-Propyl nitrate—UK0350000	25	105	40	170			
Pyrethrum—UR4200000		5					
Pyridine—UR8400000	5	15					
Quinone—DK2625000	0.1	0.4					
Resorcinol—VG9625000	10	45	20	90			
Rhodium:							
Metal—VI9069000		1					
Insoluble compounds (as Rh)		1					
Soluble compounds (as Rh)		0.01					
Ronnel—TG0525000		10					
Rosin core solder pyrolysis products (as formaldehyde)		0.1					
Rotenone (commercial)—DJ2800000		5					
Rubber solvent—VL8047000	400	1,600					
Selenium compounds (as Se)		0.2					
Selenium hexafluoride (as Se)—VS9450000	0.5	0.2					
Sesone—KK4900000		10					
Silica, fused—VV7328000		0.1, Respirable dust					
Silica, gel—VV8850000		6					
Silica, precipitated—VV8850000		6					
Silicon—VW0400000		6					
Silicon carbide—VW0450000		6					
Silicon tetrahydride—VV1400000	5	7					
Silver:							
Metal, dust and fume		0.01					
Soluble compounds (as Ag)		0.01					
Soapstone—VV8780000:							
Respirable		3					
Total		6					
Sodium azide—VV8050000:							
as HN_3 vapor					0.1		X
as NaN_3						0.3	X
Sodium bisulfite—VZ2000000		5					
Sodium fluoracetate—AH9100000		0.5		0.15			X
Sodium hydroxide—WB4900000						2	
Sodium metabisulfite—UX8225000		5					
Stibine—WJ0700000	0.1	0.5					
Stoddard solvent—WJ8925000	100	525					
Strychnine—WL2275000		0.15					
Styrene, monomer—WL3675000	50	215	100	425			
Subtilisins (Proteolytic enzymes as 100% pure crystalline enzyme)—CO9450000, CO9550000.						0.00006	
Sulfotep—XN4375000		0.2					X
Sulfur hexafluoride—WS4900000	1,000	6,000					
Sulfuric acid—WS5600000		1		3			
Sulfur monochloride—WS4300000					1	6	
Sulfur pentafluoride—WS4480000					0.01	0.1	
Sulfur tetrafluoride—WT4800000					0.1	0.4	
Sulfuryl fluoride—WT5075000	5	20	10	40			
Sulprofos—TE4165000		1					
2,4,5-T—AJ8400000		10					
Talc (containing no asbestos fibers)—WW2710000		2.5, Respirable dust					
Talc (containing asbestos fibers)—WW2700000—Use asbestos PEL.							
Tantalum—WW5505000		5					
Tellurium and compounds (as Te)		0.1					
Tellurium hexafluoride (as Te)—WY2800000	0.02	0.2					
Temephos—TF6890000		10					
TEPP—UX6825000	0.004	0.05					X
Terphenyls—WZ6450000					0.5	5	
1,1,1,2-Tetrachloro-2,2-difluoroethane—KI1425000	500	4,170					
1,1,2,2-Tetrachloro-1,2-difluoroethane—KI1420000	500	4,170					
1,1,2,2-Tetrachloroethane—KI8575000	1	7					X
Tetrachloronaphthalene—QK3700000		2					X
Tetraethyl lead (as Pb)—TP4550000		0.075					X
Tetrahydrofuran—LU5950000	200	590	250	735			
Tetramethyl lead (as Pb)—TP4725000		0.075					X
Tetramethyl succinonitrile—WN4025000	0.5	3					X
Tetranitromethane—PB4025000	1	8					

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Tetrasodium pyrophosphate—UX7350000		5					
Tetryl—BY6300000		1.5					
Thallium, soluble compounds (as T1)		0.1					X
4,4'-Thiobis(6-tert-butyl-m-cresol)—GP3150000		10					
Thioglycolic acid—AI5950000	1	4					X
Thionyl chloride—XM5150000					1	5	
Thiram—JO1400000		1					
Tin:							
Metal—XP7320000		2					
Oxide and inorganic compounds, except SnH_4 (as Sn)		2					
Organic compounds (as Sn)		0.1		0.2			X
o-Tolidine—DD1225000—Restricted use, see § 58.401							X
Toluene—XS5250000	100	375	150	560			
Toluene-2,4-diisocyanate—CZ6300000	0.005	0.04	0.02	0.15			
o-Toluidine—XU2975000—Restricted use, see also § 58.403	2	9					X
m-Toluidine—XU2800000	2	9					X
p-Toluidine—XU3150000—Restricted use, see also § 58.403	2	9					X
Tributyl phosphate—TC7700000	0.2	2.5					
Tricholoracetic acid—AJ7875000	1	7					
1,2,4-Trichlorobenzene—DC2100000					5	40	
1,1,2-Trichloroethane—KJ3150000	10	45					X
Trichloroethylene—KX4550000	50	270	200	1,080			
Trichlorofluoromethane—PB6125000					1,000	5,600	
Trichloronaphthalene—QK4025000		5					X
1,2,3-Trichloropropane—TZ9275000	10	60					X
1,1,2-Trichloro-1,2,2-trifluoroethane—KJ4000000	1,000	7,600	1,250	9,500			
Triethylamine—YE0175000	10	40	15	60			
Trifluorobromomethane—PA5425000	1,000	6,100					
Trimellitic anhydride—DC2050000	0.005	0.04					
Trimethylamine—PA0350000	10	24	15	36			
Trimethyl benzene—DC3220000	25	125					
Trimethyl phosphite—TH1400000	2	10					
2,4,6-Trinitrotoluene—XU0175000		0.5					X
Triorthocresyl phosphate—TD0350000		0.1					X
Triphenyl amine—YK2680000		5					
Triphenyl phosphate—TC8400000		3					
Tripoli—VV7336000		0.1 of contained respirable quartz.					
Tungsten (as W):							
Insoluble compounds		5		10			
Soluble compounds		1		3			
Turpentine—YO8400000	100	560					
Uranium (as U):							
Soluble compounds		0.05					
Insoluble compounds		0.2		0.6			
n-Valeraldehyde—YV3600000	50	175					
Vanadium metal and Vanadium carbide (as V)—YW1355000, YW1400000.		1					
Vanadium compounds (as V)						0.05	
Vinyl acetate—AK0875000	10	30	20	60			
Vinyl bromide—KU8400000—Restricted use, see also § 58.403.	5	20					
Vinyl chloride—KU9625000—Restricted use, see also § 58.402.	1		5				
Vinyl cyclohexene dioxide—RN8640000—Restricted use, see also § 58.403.	10	60					X
Vinylidene chloride—KV9275000	1	4					
Vinyl toluene—WL5075000	50	240	100	485			
VM & P Naphtha—OI6180000	300	1,350					
Warfarin—GN4550000		0.1					
Welding fumes not otherwise classified		5					
Wood dust—ZC9850000:							
Hard wood		1					
Soft wood		5		10			
Xylene (o-,m-,p-isomers)—ZE2450000, ZE2275000, ZE2625000.	100	435	150	655			
m-Xylene α,α'-diamine—PF8970000						0.1	X
Xylidine—ZE8575000—Restricted use, see also § 58.403	0.5	2.5					X
Yttrium—ZG2980000		1					
Zinc chloride fume—ZH1400000		1					
Zinc chromate (as Cr)—GB3290000, GB3300000—Restricted use, see also § 58.403.		0.01					
Zinc oxide fume—ZH4810000		5		10			
Zirconium compounds (as Zr)		5		10			

[1] Fibers greater than 5 microns in length, as determined by the membrane filter method at 400–450 magnification (4 millimeter objective) phase contrast illumination. Asbestos is defined as chrysotile, amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos and any of these minerals that have been chemically treated or altered.

§ 58.200 Exposure monitoring.

(a) *Frequency.* For miners exposed to substances listed in Table B–1, the mine operator shall monitor their exposure—

(1) When the operator has reason to believe that a change in production, process, materials, equipment, or engineering or administrative controls would increase a substance's concentration above the PEL;

(2) Upon installation of controls;

(3) Upon modification of controls used to reduce exposure to the PEL; and

(4) At least once every 3 months if respirators are required to be worn because a substance's concentration is above the PEL.

(b) *Cessation of monitoring.* Monitoring required by paragraphs (a)(1), (a)(2), and (a)(3) of this section shall no longer be required when airborne concentrations are determined to be at or below the PEL with 95 percent confidence.

(c) *Monitoring procedures.* Monitoring samples shall be—

(1) Representative of the affected miners' exposures;

(2) Collected and analyzed by appropriate instrumentation and methods. Instruments used to measure exposures shall be maintained and calibrated; and

(3) Collected and analyzed by a person trained or experienced in the monitoring procedures.

(d) *Recordkeeping.* The mine operator shall record the results of required exposure monitoring and retain these records for 5 years. These records shall include the following:

(1) Date of sampling.

(2) Name of miner or location of work area where each sample was collected.

(3) Substances sampled.

(4) Sampling and analytical method used, including error factor.

(5) Time or duration of each sample.

(6) Concentrations of each substance determined by sampling.

(7) Names of persons conducting the sampling and analysis.

(8) The corrective action being taken if exposure exceeds the PEL.

(e) *Access to exposure records.* (1) Upon request, the mine operator shall ensure immediate access to exposure records to the following:

(i) Miners whose exposures are included in the records.

(ii) The miners' representative for miners whom they represent.

(iii) The miner's designated representative.

(iv) Authorized representatives of the Secretary of Labor or the Secretary of Health and Human Services.

(2) Former employees shall have access to their exposure records during the five-year retention period.

(3) A copy of the record shall be provided without cost to the miner or representative.

(4) Whenever a mine operator is ceasing to do business, the operator shall transfer all records subject to this section to the successor operator. The successor operator shall receive and maintain these records for the period required by this section. Whenever an operator is ceasing to do business and there is no successor operator to receive and maintain the records subject to this section, the operator shall notify the affected employees of their rights of access to records at least 3 months prior to disposal of the records.

(f) *Observation of monitoring.* The mine operator shall provide affected miners or their representatives with an opportunity to observe exposure monitoring required by this section.

(g) *Notification of overexposure.* When a sample indicates that a miner's exposure exceeds the PEL for any substance listed in Table B–1, the mine operator shall notify the miner in writing within 15 calendar days following receipt of sampling results of the overexposure and the corrective action being taken.

§ 58.300 Dangerous atmospheres.

(a) The atmosphere shall be tested for suspected hazardous gases and vapors and oxygen deficiency prior to entrance into any of the following areas:

(1) Silos, vats, tanks, and other confined spaces with atmospheres that could contain or produce dangerous levels of air contaminants.

(2) Areas where there has been a liberation of contaminants in sufficient quantities that could result in acute respiratory exposure that poses an immediate threat of loss of life, immediate or delayed irreversible adverse health effects, or acute eye exposure that would prevent escape from a hazardous atmosphere (IDLH atmosphere).

(b) Air in work areas shall contain at least 19.5 percent oxygen by volume. If the oxygen content of the air falls below 19.5 percent, all miners affected shall be withdrawn unless they are using respiratory protection in accordance with § 58.500, and immediate action shall be taken to restore the level to at least 19.5 percent.

(c) The following precautions shall be taken when entering a dangerous atmosphere in an area listed in paragraph (a) of this section or an oxygen-deficient atmosphere listed in paragraph (b) of this section:

(1) Respiratory protection shall be used in accordance with the respiratory protection program required by § 58.500.

(2) There shall be two standby persons outside the affected area with backup equipment and rescue capabilities, or one standby person with appropriate equipment outside the affected area who could rescue the other person without entering the area.

(3) Communication (visual, voice, signal-box, radio, or other means) shall be maintained with the persons exposed.

Subpart C—Carcinogens

§ 58.401 Class 1 carcinogens.

(a) Liquids, solids, or gases containing class 1 carcinogens in concentrations that exceed those listed in Table C–1 shall not be processed, used, handled, packaged, or stored except under restricted-use conditions and procedures approved by MSHA. At a minimum, the condition and procedures shall include specifications for the use of engineering controls, personal protection, and administrative measures that ensure virtually no contact with a class 1 carcinogen. The conditions and procedures shall also include emergency and decontamination procedures, monitoring and training requirements associated with the class 1 carcinogen. Exposure to class 1 carcinogens that have PELs on Table B–1 shall be further controlled in accordance with § 58.100 of this part. Rotation of workers shall not be used to comply with the PEL.

(b) *Approval procedures.* The mine operator shall submit proposed conditions or procedures for class 1 carcinogens for approval to the Administrator, Metal and Nonmetal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(1) The Administrator shall approve or disapprove the operator's submission within 120 days from its receipt by MSHA. The Administrator shall notify the operator in writing of specific reasons for disapproval of any condition or procedures and provide the operator with an opportunity to discuss necessary changes.

(2) The operator shall notify the Administrator of any significant change or modification in conditions or procedures approved by MSHA.

(3) Approval of the conditions or procedures may be revoked if, based on new evidence unavailable at the time of approval, MSHA finds that they are inadequate to protect the health of miners. The Administrator shall notify the operator in writing or modifications

that must be made in order for the operator to retain use approval. The Administrator shall provide a reasonable opportunity to implement the changes before MSHA revokes the operator's approval.

(c) *Appeal procedures.* A decision by the Administrator to disapprove or revoke approval of any part of an operator's conditions or procedures may be appealed to the Assistant Secretary for Mine Safety and Health, 4015 Wilson Boulevard, Arlington, Virginia 22203. The appeal shall be submitted within 30 days of notification of the decision made by the Administrator. The Assistant Secretary shall provide a written determination to the operator within 30 days of receipt of the appeal.

(d) *Availability of approval.* The operator shall make a copy of the MSHA-approved conditions of procedures available at the mine site for inspection by MSHA and examination by miners and their representatives.

TABLE C–1.—CLASS 1 CARCINOGENS

Carcinogen	Concentration, percent (weight or volume)
2-Acetylaminofluorene	.1
4-Aminodiphenyl	.1
Benzidine	.1
Benzo(a)pyrene (commercially manufactured)	.1
bis(Chloromethyl) ether	.1
Chloromethyl methyl ether	.1
Chrysene (commercially manufactured)	.1
3,3'-Dichlorobenzidine	.1
4-Dimethylaminoazobenzene	.1
Dimethyl carbamoyl chloride	.1
Ethylene dibromide	.1
Hexamethyl phosphoramide	.1
α-Naphthylamine	.1
α-Naphthylamine	.1
4-Nitrodiphenyl	.1
N-Phenyl-β-naphthylamine	.1
Propane sultone	.1
o-Tolidine	.1

§ 58.402 Class 2 carcinogens.

Exposure to liquids, solids, or gases containing class 2 carcinogens in concentrations that exceed those listed in Table C–2 shall be controlled by implementation of the following requirements. Exposure to class 2 carcinogens that have PELs on Table B–1 shall also meet requirements of § 58.100 of this part. Rotation of workers shall not be used to comply with the PEL.

(a) The mine operator shall establish a restricted area where a class 2 carcinogen is processed, used, packaged, handled, or stored.

(b) Entrances to the restricted area shall be posted with signs stating the nature of the hazard. Appropriate instructions shall be posted informing persons of the procedures that must be followed when entering or leaving the restricted area.

(c) Storage or consumption of food, beverages, smoking products, tobacco products, or products for chewing and application of cosmetics shall not be permitted in the restricted area.

(d) The restricted area shall be controlled by engineering controls and administrative measures to prevent contamination of nonrestricted areas.

(e) The introduction or removal of any equipment, material, or other items to or from restricted areas shall be done in a manner that does not contaminate nonrestricted areas.

(f) Containers of class 2 carcinogens or materials contaminated by them shall be clearly marked and their contents identified. The containers shall be stored in a manner that prevents contamination of restricted or nonrestricted areas.

(g) Class 2 carcinogens shall be processed or used in an isolated system, closed system, laboratory-type hood, or in any system that offers equivalent protection against entry of the substances into a restricted or nonrestricted area.

(h) At the beginning of each shift, prior to entering a restricted area, miners shall be provided with and wear clean, full-body protective clothing (such as smocks, coveralls, or long-sleeved shirts and pants), work shoes or shoe covers, gloves, and other appropriate personal protection.

(i) Prior to exiting a restricted area, miners shall remove and leave protection clothing and equipment at the point of exit. At the last exit of the day, miners shall place clothing and equipment in impervious containers at the point of exit for purposes of decontamination and disposal.

(j) Miners shall wash hands, forearms, face and neck at each exit from a restricted area close to the point of exit and before engaging in other activities.

(k) Miners shall shower after the last exit of the day.

(l) Written decontamination, disposal, and emergency procedures shall be developed and implemented for the restricted area and process.

(m) At least once every 12 months, the mine operator shall monitor to evaluate the continued effectiveness of controls and decontamination procedures, using appropriate instrumentation and methods.

(n) Prior to initial assignment and at least once every 12 months, miners required to enter the restricted area or who are involved in maintenance on contaminated equipment, decontamination, disposal, and emergency response shall receive training on the risks and hazards of the class 2 carcinogens being used and the decontamination and emergency procedures to be followed.

TABLE C–2.—CLASS 2 CARCINOGENS

	Concentration percent (weight or volume)
Carbon tetrachloride	.1
Ethylenimine	.1
4,4'-Methylene bis(2-chloroaniline)	.1
β-Propiolactone	.1
Vinyl chloride	.1

§ 58.403 Class 3 carcinogens.

Exposure to liquids, solids, or gases containing class 3 carcinogens in concentrations that exceed those listed in Table C–3 shall be controlled by implementation of the following requirements. Exposure to class 3 carcinogens that have PELs on Table B–1 shall also meet the requirements of § 58.100 of this part. Rotation of workers shall not be used to comply with the PEL.

(a) The mine operator shall establish a restricted area where a class 3 carcinogen is found to be above the PEL or STEL or may be anticipated to be above the PEL or STEL.

(b) Entrances to the restricted area shall be posted with signs stating the nature of the hazard. Appropriate instructions shall be posted informing persons of the procedures that must be followed when entering or leaving the restricted area.

(c) Storage or consumption of food, beverages, smoking products, tobacco products, or products for chewing and application of cosmetics shall not be permitted in the restricted area or in any area where these items may come into direct contact with the carcinogen.

(d) The restricted area shall be controlled by engineering and administrative measures.

(e) The introduction or removal of any equipment, material, or other items to or from restricted areas, or equipment, materials, or other items contaminated with the carcinogen, shall be done in a manner that does not contaminate nonrestricted areas.

(f) Containers of class 3 carcinogens or materials contaminated by them shall be clearly marked and their contents identified. The containers shall be stored in a manner that prevents

contamination of restricted or nonrestricted areas.

(g) For emergency control activities and where direct contact with the carcinogen is possible, miners shall be provided with wear clean, full-body protective clothing (such as smocks, coveralls, or long-sleeved shirts and pants), work shoes or shoe covers, gloves, and other appropriate personal protection.

(h) Prior to the end of the shift and after completion of emergency control activities or any work involving direct contact with the carcinogen, miners shall place protective clothing and equipment in impervious containers for purposes of decontamination and disposal.

(i) After completion of emergency control activities or any work involving direct contact with the carcinogen, miners shall wash hands, forearms, face and neck before engaging in other activities and shower at the end of the shift.

(j) Written decontamination, disposal, and emergency procedures shall be developed and implemented for the restricted area and process.

(k) At least once every 12 months, the mine operator shall monitor to evaluate the continued effectiveness of controls and decontamination procedures, using appropriate instrumentation and methods.

(l) Prior to initial assignment and at least once every 12 months, miners required to enter the restricted area or who are involved in maintenance on contaminated equipment, decontamination, disposal, and emergency response shall receive training on the risks and hazards of the class 3 carcinogens being used and the decontamination and emergency procedures to be followed.

TABLE C-3.—CLASS 3 CARCINOGENS

	Concentration percent (weight or volume)
Acrylamide	.1
Acrylonitrile	.1
Amitrole	.1
Benzene	5.0
1,3-Butadiene	.1
Chloroform	.1
1,1-Dimethylhydrazine	.1
Dimethyl sulfate	.1
Ethyl acrylate	.1
Ethylene dichloride	.1
Ethylene oxide	.1
Formaldehyde	.1
Hexachlorobutadiene	.1
Hydrazine	.1
Lead chromate	5.0
Methylene chloride	.1
4,4'-Methylene dianiline	.1
Methyl hydrazine	.1
Methyl iodide	.1
2-Nitropropane	.1
Perchloroethylene	.1
Phenylhydrazine	.1
Propylene imine	.1
o-Toluidine	.1
p-Toluidine	.1
Vinyl bromide	.1
Vinyl cyclohexene dioxide	.1
Xylidine	.1
Zinc chromate	5.0

§ 58.404 Class 4 carcinogens.

Exposure to liquids, solids, or gases containing class 4 carcinogens in concentrations exceeding those listed in Table C-4 or a process listed in Table C-4 shall be controlled by implementation of the following requirements. Exposure to class 4 carcinogens that have PELs on Table B-1 shall also meet the requirements of § 58.100 of this part. Rotation of workers shall not be used to comply with the PEL.

(a) The area where a class 4 carcinogen is processed, packaged, used, handled, or stored shall be restricted to essential personnel.

(b) Entrances to the restricted area shall be posted with signs stating the natue of the hazard. Appropriate instructions shall be posted informing miners of the procedures that must be followed when entering or leaving the restricted area.

(c) Storage or consumption of food, beverages, smoking products, tobacco products, or products for chewing and application of cosmetics shall not be permitted in the restricted area.

(d) At the beginning of each shift, prior to entering the restricted area, miners shall be provided with and wear clean, full-body protective clothing (such as smocks, coveralls, or long-sleeved shirts and pants), work shoes or shoe covers, gloves, and other appropriate personal protection.

(e) Prior to exiting a restricted area, miners shall remove and leave protective clothing and equipment at the point of exit. At the last exist of the day, miners shall place clothing and equipment in impervious containers at the point of exit for purposes of decontamination and disposal.

(f) Miners shall wash hands, forearms, face and neck at each exit from a restricted area close to the point of exit and before engaging in other activities.

(g) Miners shall shower upon the last exit of the day.

(h) Containers of class 4 carcinogens shall be clearly marked and their contents identified. The container shall be stored in a manner that prevents contamination of restricted or nonrestricted areas.

(i) Written decontamination, disposal, and emergency procedures shall be developed and implemented for the restricted area and process.

(j) At least once every 12 months, the mine operator shall monitor to evaluate the continued effectiveness of controls and decontamination procedures, using appropriate instrumentation and methods.

(k) Prior to initial assignment and at least once every 12 months, miners required to enter the restricted area or who are involved in decontamination, disposal, and emergency response shall receive training on the risks and hazards of the class 4 carcinogens being used and the decontamination and emergency procedures to be followed.

TABLE C-4.—CLASS 4 CARCINOGENS

	Concentration, percent (weight or volume)
Asbestos mining and milling	
Antimony trioxide production	
Arsenic trioxide production	
Beryllium and compounds (except welding)	.1
Cadmium compounds (except welding)	.1
Chromite ore processing (Chromate) as Cr	
Coal tar pitch volatiles	2.0
Nickel sulfide roasting	
Vermiculite mining and milling where asbestos is present in concentrations greater than one percent in the ore or concentrate	

§ 58.405 Asbestos construction work.

Exposure to asbestos resulting from asbestos construction work shall be controlled by implementation of the following requirements. Exposure to asbestos in these situations shall also meet the requirements of § 58.100 of this part. Rotation of workers shall not be used to comply with the PEL. For purposes of this section, asbestos construction work means construction work such as demolition or salvage of structures where asbestos is present; installation, removal, or encapsulation of asbestos and materials containing greater than 0.1 percent asbestos; spill and emergency cleanup of asbestos and

material containing greater than 0.1 percent asbestos; transportation, disposal, storage or containment of asbestos or materials containing greater than 0.1 percent asbestos on the site or location at which construction activities are performed.

(a) The operator shall designate a person to be responsible for the asbestos construction work who will have authority to take prompt corrective action to eliminate hazards. This person shall have had comprehensive training on the hazards of asbestos and asbestos construction work, such as a course conducted by an EPA Asbestos Training Center, or be a certified industrial hygienist (C.I.H.) certified by the American Board of Industrial Hygiene, or be certified for asbestos construction work by a state program.

(b) The area where asbestos construction work is being done shall be restricted to essential personnel.

(c) Entrances to the restricted area shall be posted with signs stating the nature of the hazard. Appropriate instructions shall be posted informing miners of the procedures that must be followed when entering or leaving the restricted area.

(d) Storage or consumption of food, beverages, smoking products, tobacco products, or products for chewing and application of cosmetics shall not be permitted in the restricted area.

(e) At the beginning of each shift, prior to entering a restricted area, miners shall be provided with and wear clean, full-body protective clothing (such as coveralls, or long-sleeved shirts and pants), work shoes or shoe covers, gloves, head covers, and other appropriate personal protection.

(f) Prior to exiting a restricted area, miners shall remove and leave protective clothing and equipment at the point of exit. At the last exit of the day, miners shall place clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal.

(g) Miners shall shower immediately after each exit.

(h)(1) Whenever feasible, the mine operator shall establish negative-pressure enclosures before beginning removal, demolition, or renovation operations.

(2) For small-scale, short-duration activities involving removal of asbestos-containing insulation on pipes, removal of entire and intact asbestos-insulated pipes or structures, and replacement of electrical conduits through or near asbestos-containing material, glove bags and wet methods may be used instead of negative-pressure enclosures.

(i) Daily monitoring shall be conducted in the restricted area if the exposure exceeds the PEL or could reasonably be expected to exceed the PEL. When all workers within a restricted area are equipped with supplied-air respirators operated in the positive-pressure mode, daily monitoring is not required.

(j) Written decontamination, disposal and emergency procedures shall be developed and implemented for the restricted area and process.

(k) Prior to initial assignment and at least once every 12 months, persons required to enter the restricted areas or who are involved in decontamination, disposal, and emergency response shall receive training on the risks and hazards of asbestos and asbestos construction work, as well as the decontamination, disposal, and emergency procedures to be followed.

(l) The mine operator shall notify MSHA at least 20 days prior to beginning asbestos construction work involving—

(1) At least 80 linear meters (260 linear feet) of asbestos or material containing greater than 0.1 percent asbestos on pipes; or

(2) At least 15 square meters (160 square feet) of asbestos or material containing greater than 0.1 percent asbestos on other facility components.

(m) Containers of asbestos and materials containing greater than 0.1 percent asbestos shall be clearly marked and their contents identified. The containers shall be stored in a manner that prevents contamination of restricted or nonrestricted areas.

(n) The introduction or removal of any equipment, material, or other items to or from the restricted area shall be done in a manner that does not contaminate nonrestricted areas.

§ 58.450 Medical surveillance program.

(a) *Establishment.* The mine operator shall develop and implement a written medical surveillance program that shall make available medical examinations to miners who are working with or will be assigned to work with a chemical or process listed on Table C–5. The medical examination shall be provided at the operator's cost and at a reasonable time and place.

(b) *Medical examinations.* (1) Under the medical surveillance program, a medical examination by a licensed physician shall be made available to miners—

(i) Prior to initial assignment;

(ii) At least once every twelve months; and

(iii) At any time a miner is exposed to any carcinogen listed on Table C–5 as a result of an emergency.

(2) The operator shall provide the examining physician with the following information:

(i) The names of chemicals to be used.

(ii) Description of the work to be performed by the miner.

(iii) Duration and frequency of chemical usage.

(iv) Environmental conditions of the intended worksite.

(v) Type of personal protective equipment to be worn by the miner.

(vi) Relevant information from any previous medical examinations of the affected miner that is in the operator's possession.

(3) The mine operator shall require the physician to submit a written report of the miner's condition to the operator. The mine operator shall instruct the physician not to reveal orally, or in the written evaluation, any specific findings or diagnoses unrelated to the miner's exposure to carcinogens.

(4) The mine operator shall inform any miner who refuses to have the medical examination of the possible health consequences of such refusal and shall obtain a signed statement from the miner indicating that the miner understands the risk involved in the refusal to be examined.

(c) *Medical transfer.* (1) Upon notification from the physician that a miner's medical examination shows evidence that the miner has developed cancer or any material impairment of health of functional capacity due to occupational exposure to a carcinogen listed on Table C–5, the miner shall be given the option to work in an area of the mine where there is no exposure to the carcinogen. The operator shall notify the miner in writing of eligibility to exercise the option of medical transfer.

(2) When a miner requests to transfer, the mine operator shall notify the Administrator, Metal and Nonmetal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 15 calendar days from receipt by the operator of the miner's request for transfer. The operator's notice to the Administrator shall include the miner's name, occupation and assignment of new duties including the scheduled date of transfer.

(3) When a miner elects to transfer, the transfer shall take place on or before the 21st calendar day following receipt by the operator of the miner's request. The mine operator shall transfer the miner to an existing position at the same mine. If the miner agrees in writing, the

operator may transfer the miner to a different mine.

(4) Any miner transferred under this section shall—

(i) Continue to receive compensation at no less than the regular rate of pay for a miner in the classification held by that miner immediately prior to the transfer.

(ii) Receive wage increases based upon the new work classification.

(d) *Recordkeeping.* (1) The mine operator shall maintain a record of the medical evaluation conducted for each miner. These records shall be kept for the duration of the miner's employment plus 30 years.

(2) Upon request, the operator shall give access to the miner's medical records required by this section to the miner or, with the miner's written consent, to the miner's designated representative. Access shall also be given to authorized representatives of the Secretary of Labor and the Secretary of the Department of Health and Human Services. Upon termination of employment, miners shall be given a copy of their medical evaluation records. Copies of the records shall be provided without cost.

(3) Whenever a mine operator is ceasing to do business, the operator shall transfer all records subject to this section to the successor operator. The successor operator shall receive and maintain these records for the period required by this section. Whenever an operator is ceasing to do business and there is no successor operator to receive and maintain the records, the operator shall notify all affected miners of their rights of access to records at least 3 months prior to disposal of the records.

Table C–5 Medical Evaluation Carcinogens

Asbestos mining and milling
Asbestos construction work
2-Acetylaminofluorene
Acrylonitrile
4-Aminodiphenyl
Arsenic trioxide production
Benzene (except gasoline
Benzidine
bis(Chloromethyl) ether
Chloromethyl methyl ether
3,3 Dichlorobenzidine
4-Dimethylaminoazobenzene
Ethylenimine
Ethylene oxide
Formaldehyde
α-Naphthylamine
β-Naphthylamine
4-Nitrodiphenyl
N-Nitrosodimethylamine
β-Propiolactone
Vermiculite mining and milling where asbestos is present in concentrations greater than one percent in the ore or concentrate
Vinyl chloride

Subpart D—Respiratory Protection

§ 58.500 Respiratory protection program

When respiratory protection is required by this part, written standard operating procedures shall be developed and implemented that include the requirements of this section.

(a) Only respirators approved under 30 CFR Part 11 shall be used. Respirators shall be maintained in approved condition.

(b) Respirators shall be selected according to the nature of the hazard, the criteria in Tables D–1, D–2 and D–3, the manufacturer's limitations on the respirator, and the characteristics of the work environment, which includes the exposure levels, the period of time the respiratory protection will be worn, and work activities of the employees.

(c) Respirators shall be inspected before each use and after cleaning, sanitizing, and maintenance. Emergency-use respirators shall be inspected monthly with a record kept of the last inspection.

(d) Respirator wearers shall be provided with a clean and sanitized respirator each day. Respirators shall be cleaned and sanitized prior to use by another person. Emergency-use respirators shall be cleaned and sanitized promptly after each use.

(e) Respirators shall be stored in a manner that protects them from damage or contamination. Respirators stored for emergency use shall be accessible to persons who may need to use them.

(f) For respirators with tight-fitting facepieces, a qualitative or quantitative respirator fit test that has been shown by scientific data to be capable of indicating the adequacy of the fit shall be conducted initially and at least once every 12 months thereafter. Respirators failing to provide a satisfactory fit shall not be used. For respirators fitted quantitatively, a minimum ratio of 100 must be obtained. The maximum assigned protection factor allowed for qualitatively-fitted respirators is 10, with the exception of disposable dust/mist respirators which is limited to 5. For respirators fitted quantitatively the assigned protection factor is one-tenth the measured ratio but no greater than the maximum assigned protection factor listed in Table D–2 and D–3.

(g) A record of the latest fit test for each respirator wearer shall be kept for 1 year or until the next fit test. The record shall include the date the fit test was made, the respirator wearer's name, and the make, model, and size of the respirators tested for which a satisfactory fit was obtained. When quantitative fit-testing is conducted, the protection factor assigned to each respirator wearer and tested respirator shall be included in the record.

(h) For respirators with tight-fitting facepieces, negative- and postive-pressure sealing tests or equivalent qualitative sealing tests shall be conducted prior to use. Respirators failing to provide a satisfactory seal shall not be used.

(i) Respirators shall not be used when facial hair comes between the sealing surface of the respirator facepiece and the face.

(j) Respirator wearers, supervisors, and persons issuing or maintaining respirators shall be trained initially and at least once every 12 months thereafter in the selection, use, and maintenance of respiratory devices. The mine operator and the person trained shall both certify that the training was conducted.

(k) When compressors or blowers are used to provide respirable air, they shall be constructed and located to prevent entry of contaminated air into the air supply system. Compressors shall be equipped with in-line air purifying sorbent beds or filters to ensure breathing air quality. Oil-lubricated compressors shall be equipped with a carbon monoxide or high-temperature alarm.

(l) When supplied air, compressed air, or oxygen is provided for respiration, it shall meet the requirements of 30 CFR part 11.

(m) Compressed oxygen shall not be used in atmosphere-supplying respirators or in open-circuit, self-contained breathing apparatus that have previously used compressed air.

TABLE D–1 OXYGEN-DEFICIENT ATMOSPHERES

Altitude (ft.)	Oxygen-deficient atmospheres	Oxygen-deficient IDLH atmospheres
0–3,000	19.5	16
3,001–4,000	19.5	16.4
4,001–5,000	19.5	17.1
5,001–6,000	19.5	17.8
6,001–7,000	19.5	18.5
7,001–8,000	19.5	19.3
Above 8,000 ft. to 14,000 ft		19.5

TABLE D-2 AIR-PURIFYING RESPIRATORS [1]

	Assigned maximum protection factor
Half Mask or Quarter Facepiece	10
Full Facepiece	50
Disposable, Dust/Mist	5
Powered Air-Purifying	
Tight-fitting full facepiece	250
Tight-fitting half mask [2]	50
Loose-fitting hood or helmet	25

[1] Air-purifying respirators may not be used in oxygen-deficient or IDLH atmospheres. Air-purifying respirators used for particulate protection against carcinogens shall be equipped with high-efficiency filters.

[2] Only full-facepiece respirators are to be used in contaminant concentrations that produce eye irritation.

TABLE D-3 ATMOSPHERE-SUPPLYING RESPIRATORS

	Assigned maximum protection factor
Supplied-Air Respirator (SAR): [1]	
Negative Pressure (demand):	
Half mask	10.
Full facepiece	50.
Continuous Flow:	
Hood or helmet	25
Half mask	50.
Full facepiece	250.
Pressure Demand:	
Half mask	1,000.
Full facepiece	1,000.
Combination Full Facepiece:	
Pressure Demand SAR with Auxiliary Self-Contained Air Supply	([3])
Self-Contained Breathing Apparatus (SCBA): [2]	
Demand (except for apparatus approved for mine rescue)	50.
Demand—approved for mine rescue	([3])
Pressure Demand	([3])

[1] Any atmosphere-supplying respirator may be used in an oxygen-deficient atmosphere where the oxygen content is below the level listed for an oxygen-deficient atmosphere but above the level listed for oxygen-deficient IDLH atmospheres in Table D-1.

[2] Only a full-facepiece pressure-demand SCBA, combination full-facepiece pressure-demand SAR with auxiliary self-contained air supply or SCBA approved for mine rescue may be used in unknown IDLH or oxygen-deficient IDLH atmospheres listed in Table D-1.

[3] Greater than 1,000, and IDLH, or unknown concentrations.

§ 56.550 Medical surveillance program.

(a) *Establishment.* The mine operator shall develop and implement a written medical surveillance program that shall require miners who are working, or will be assigned to work, in an area requiring respiratory protection to receive a medical examination. The medical examination shall be provided at the operator's cost and at a reasonable time and place.

(b) *Medical examinations.* (1) Under the medical surveillance program, miners shall be examined by a licensed physician—

(i) Prior to initial assignment;

(ii) At least once during the period listed in Table D-4; and

(iii) At any time the miner experiences difficulty breathing while being fitted for, or while using, a respirator.

(2) The operator shall provide the examining physician with the following information:

(i) The type of respiratory protection to be used.

(ii) Description of the work effort required.

(iii) Duration and frequency of usage.

(iv) The type of work performed, including any special responsibilities that could affect the safety of other miners, such as firefighting or rescue efforts.

(v) Any special environmental conditions, such as heat or work in confined spaces.

(vi) Relevant additional requirements for protective clothing and equipment.

(vii) Anticipated exposure levels.

(3) The mine operator shall require the physician to submit a written report of the miner's condition to the operator. The mine operator shall instruct the physician not to reveal orally, or in the written evaluation, any specific findings or diagnoses unrelated to the miner's respirator use.

(c) *Medical transfer.* (1) Upon notification from the physician that a miner's medical examination shows evidence that the miner is unable to wear a respirator, the miner shall be transferred to work in an area of the mine where respiratory protection is not required.

(2) When a miner must be transferred under this section, the mine operator shall notify the Administrator, Metal and Nonmetal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 15 calendar days from receipt of the physician's evaluation, that a miner will be transferred. The operator's notice to the Administrator shall include the miner's name, occupation, and assignment of new duties, including the scheduled date of transfer.

(3) The miner's transfer shall be on or before the 21st calendar day following receipt of the physician's evaluation. The mine operator shall transfer the miner to an existing position at the same mine. If the miner agrees in writing, the operator may transfer the miner to a different mine.

(4) Any miner transferred under this section shall—

(i) Continue to receive compensation at no less than the regular rate of pay for a miner in the classification held by that miner immediately prior to the transfer.

(ii) Receive wage increases based upon the new work classification.

(d) *Recordkeeping.* (1) The mine operator shall maintain a record of the medical evaluation conducted for each miner. These records shall be kept by the operator for 5 years.

(2) Upon request, the operator shall give access to the miner's medical records required by this section to the miner or, with the miner's written consent, to the miner's designated representative. Access shall also be given to authorized representatives of the Secretary of Labor and the Secretary of the Department of Health and Human Services. Upon termination of employment, miners shall be given a copy of their medical evaluation records. Copies of records shall be provided without cost.

(3) Whenever a mine operator is ceasing to do business, the operator shall transfer all records subject to this section to the successor operator. The successor operator shall receive and maintain these records for the period required by this section. Whenever an operator is ceasing to do business and there is no successor operator to receive and maintain the records, the operator shall notify all affected miners of their rights of access to records at least 3 months prior to disposal of the records.

TABLE D-4.—FREQUENCY OF MEDICAL EXAMINATIONS FOR RESPIRATOR USE

	Worker age (years)		
	<35	35-45	>45
Most working conditions requiring respirators.	Every 5 years.	Every 2 years.	Annually.
Strenuous work conditions with SCBA.	Every 3 years.	Every 18 months.	Annually.

Subpart E—Miscellaneous

§ 56.600 Prohibited areas for food and beverages.

No one shall be allowed to consume or store food or beverages in a toilet room or in any area where the food or beverages could be contaminated by a hazardous substance.

§ 56.610 Abrasive blasting.

(a) *Surface areas.* When an abrasive blasting operation is performed and silica sand or other materials containing

more than 1 percent quartz are used as an abrasive substance, all exposed miners shall use supplied-air respirators approved for abrasive blasting in accordance with § 58.500 or the operation shall be performed in a totally enclosed device with the person outside the device.

(b) *Underground areas of underground mines.* Silica sand or other materials containing more than 1 percent quartz shall not be used as an abrasive substance in abrasive blasting.

§ 58.620 Drill dust control.

Holes shall be collared and drilled wet, or other effective dust-control measures shall be used when drilling non-water-soluble material. Effective dust-control measures shall be used when drilling water-soluble materials.

Appendix A—Nonmandatory—Work Practices and Engineering Controls for Major Asbestos Removal, Renovation, and Demolitions Operations

This is a nonmandatory appendix designed to provide guidelines to assist employers in complying with the requirements of § 58.405. Specifically, this appendix describes the equipment, methods, and procedures that should be used in major asbestos-removal projects conducted to abate a recognized asbestos hazard or in preparation for building renovation or demolition. These projects require the construction of negative-pressure temporary enclosures to contain the asbestos material and to prevent the exposure of bystanders and other workers at the worksite. Paragraph (h) of § 58.405 of the standard requires that, whenever feasible, the mine operator must establish negative-pressure enclosures before beginning asbestos-removal, demolition, or renovation operations. The operator should also be aware that, when conducting asbestos-removal projects, enclosures may be required under the National Emissions Standards for Hazardous Air Pollutants (NESHAPS), 40 CFR part 61, subpart M, or EPA regulations under the Clean Water Act.

Construction of a negative-pressure enclosure is a simple but time-consuming process that requires careful preparation and execution; however, if the procedures below are followed, contractors should be assured of achieving a temporary barricade that will protect workers and others outside the enclosure from exposure to asbestos and minimize to the extent possible the exposure of asbestos workers inside the barrier as well.

The equipment and materials required to construct these barriers are readily available and easily installed and used. In addition to an enclosure around the removal site, the standard requires that workers leave their work clothes at the point of exit and shower immediately after each exit. A recommended facility is described below. The steps in the process of preparing the asbestos-removal site, building the enclosures, constructing hygiene facilities, removing the asbestos-containing material, and restoring the site include:

(1) Planning the removal project;
(2) Procuring the necessary materials and equipment;
(3) Preparing the work area;
(4) Removing the asbestos-containing material;
(5) Cleaning the work area; and
(6) Disposing of the asbestos-containing waste.

Planning the Removal Project

The planning of an asbestos-removal project is critical to completing the project safely and cost-effectively. A written asbestos-removal plan should be prepared that describes the equipment and procedures that will be used throughout the project. The asbestos-abatement plan will aid not only in executing the project but also in complying with the reporting requirements of the USEPA asbestos regulations (40 CFR part 61, subpart M), which call for specific information such as a description of control methods and control equipment to be used and the disposal sites the contractor proposes to use to dispose of the asbestos-containing materials.

The asbestos-abatement plan should contain the following information:

- A physical description of the work area;
- A description of the approximate amount of material to be removed;
- A schedule for turning off and sealing existing ventilation systems;
- Personnel hygiene procedures;
- Labeling procedures;
- A description of personal protective equipment and clothing to be worn by workers;
- A description of the local exhaust ventilation systems to be used;
- A description of work practices to be observed by workers;
- A description of the methods to be used to remove the asbestos-containing material;
- The wetting agent to be used;
- A description of the sealant to be used at the end of the project;
- An air monitoring plan;
- A description of the method to be used to transport waste materials; and
- The location of the dump site.

Materials and Equipment Necessary for Asbestos Removal

Although individual asbestos-removal projects vary in terms of the equipment required to accomplish the removal of the material, some equipment and materials are common to most asbestos-removal operations. Equipment and materials that should be available at the beginning of each project are (1) rolls of polyethylene sheeting; (2) rolls of gray duct tape or clear plastic tape; (3) HEPA-filtered vacuum(s); (4) HEPA-filtered portable ventilation systems; (5) a wetting agent; (6) an airless sprayer; (7) a portable shower unit; (8) appropriate respirators; (9) disposable coveralls; (10) signs and labels; (11) preprinted disposal bags; and (12) a manometer or pressure gauge.

Rolls of Polyethylene Plastic and Tape. Rolls of polyethylene plastic (6 mil in thickness) should be available to construct the asbestos-removal enclosure and to seal windows, doors, ventilation systems, wall penetrations, and ceilings and floors in the work area. Gray duct tape or clear plastic tape should be used to seal the edges of the plastic and to seal any holes in the plastic enclosure. Polyethylene plastic sheeting can be purchased in rolls up to 20 feet in width and up to 100 feet in length.

HEPA-Filtered Vacuum. A HEPA-filtered vacuum is essential for cleaning the work area after the asbestos has been removed. Such vacuums are designed to be used with a HEPA (High-Efficiency Particulate Air) filter, which is capable of removing 99.97 percent of the asbestos particles from the air. Various sizes and capacities of HEPA vacuums are available. All of these models are portable, and all have long hoses capable of reaching out-of-the-way places, such as areas above ceiling tiles and behind pipes.

Exhaust Air Filtration System. A portable ventilation system is necessary to create a negative pressure within the asbestos-removal enclosure. Such units are equipped with a HEPA filter and are designed to exhaust and clean the air inside the enclosure before exhausting it to the outside of the enclosure. The number and capacity of units required to ventilate an enclosure depend on the size of the area to be ventilated.

Wetting Agents. Wetting agents (surfactants) are added to water (which is then called amended water) and used to soak asbestos-containing materials; amended water penetrates more effectively than plain water and permits more thorough soaking of the asbestos-containing materials. Wetting the asbestos-containing material reduces the number of fibers that will break free and become airborne when the asbestos-containing material is handled or otherwise disturbed. Asbestos-containing materials should be thoroughly soaked before removal is attempted; the dislodged material should feel spongy to the touch. Wetting agents are generally prepared by mixing 1 to 3 ounces of wetting agent to 5 gallons of water.

One type of asbestos, amosite, is relatively resistant to soaking, either with plain or amended water. The work practices of choice when working with amosite-containing material are to soak in the material as much as possible and then to bag it for disposal immediately after removal, so that the material has no time to dry and be ground into smaller particles that are more likely to liberate airborne asbestos.

In a very limited number of situations, it may not be possible to wet the asbestos-containing material before removing it. Examples of such rare situations are: (1) Removal of asbestos material from a "live" electrical box that was oversprayed with the material when the rest of the area was sprayed with asbestos-containing coating; and (2) removal of asbestos-containing insulation from a live steam pipe. In both of these situations, the preferred approach would be to turn off the electricity or steam, to permit wet removal methods to be used. However, where removal work must be performed during working hours (that is, when normal operations cannot be

disrupted), the asbestos-containing material must be removed dry. Immediate bagging is then the only method of minimizing the amount of airborne asbestos generated.

Airless Sprayer. Airless sprayers are used to apply amended water to asbestos-containing materials. Airless sprayers allow the amended water to be applied in a fine spray that minimizes the release of asbestos fibers by reducing the impact of the spray on the materials to be removed. Airless sprayers are inexpensive and readily available.

Portable Shower. Unless the site has available a permanent shower facility that is contiguous to the removal area, a portable shower system is necessary to permit workers to clean themselves after exposure to asbestos and to remove any asbestos contamination from their hair and bodies. Taking a shower prevents workers from leaving the work area with asbestos on their clothes and thus prevents the spread of asbestos contamination to areas outside the asbestos-removal area. This measure also protects members of the families of asbestos workers from possible exposure to asbestos. Showers should be supplied with warm water and a drain. A shower water filtration system to filter asbestos fibers from the shower water is recommended. Portable shower units are readily available, inexpensive, and easy to install and transport.

Respirator. Workers involved in asbestos-removal projects should be provided with appropriate NIOSH-approved respirators. Selection of the appropriate respirator should be based on the concentration of asbestos fibers in the work area. If the concentration of asbestos fibers is unknown, workers should be provided with respirators that will provide protection against the highest concentration of asbestos fibers that can reasonably be expected to exist in the work area. For most work within an enclosure, workers should wear half-mask dual-filter cartridge respirators. Disposable face mask respirators (single-use) should not be used to protect employers from exposure to asbestos fibers.

Disposable Coveralls. Workers involved in asbestos-removal operations should be provided with disposable impervious coveralls that are equipped with head and foot covers. The coverall has a zipper front and elastic wrists and ankles.

Signs and Labels. Before work begins, a supply of signs to demarcate the entrance to the work area should be obtained. The required labels are also commercially available as press-on labels and preprinted on the 6-milpolyethylene plastic bags used to dispose of asbestos-containing waste material.

Preparing the Work Area

Preparation for constructing negative-pressure enclosures should begin with the removal of all movable objects from the work area (for example, desks, chair, rugs, and light fixtures) to ensure that these objects do not become contaminated. When movable objects are contaminated or suspected of being contaminated, they should be vacuumed with a HEPA vacuum and cleaned with amended water, unless they are made of material that will be damaged by the wetting agent; wiping with plain water is recommended in those cases where amended water will damage the object. Before the asbestos-removal work begins, objects that cannot be removed from the work area should be covered with a 6-mil thick polyethylene plastic sheeting that is securely taped with duct tape or plastic tape to achieve an airtight seal around the object.

Constructing the Enclosure

When all objects have either been removed from the work area or covered with plastic, all penetrations of the floor, walls, and ceiling should be sealed with 6-mil polyethylene plastic and tape to prevent airborne asbestos from escaping into areas outside the work area or from lodging in cracks around the penetrations. Penetrations that require sealing are typically found around electrical conduits, telephone wires, and water-supply and drain pipes. A single entrance to be used for access and egress to the work area should be selected, and all other doors and windows should be sealed with tape or be covered with 6-mil polyethylene plastic sheeting and securely taped. Covering windows and unnecessary doors with a layer of polyethylene before covering the walls provides a second layer of protection and saves time in installation because it reduces the number of edges that must be cut and taped. All other surfaces such as support columns, ledges, pipes, and other surfaces should also be covered with polyethylene plastic sheeting and taped before the walls themselves are completely covered with sheeting.

Next a thin layer of spray adhesive should be sprayed along the top of all walls surrounding the enclosed work area, close to the wall-ceiling interface, and a layer of polyethylene plastic sheeting should be stuck to this adhesive and taped. The entire inside surfaces of all wall areas are covered in this manner, and the sheeting over the walls is extended across the floor area until it meets in the center of the area, where it is taped to form a single layer of material encasing the entire room except for the ceiling. A final layer of plastic sheeting is then laid across the plastic-covered floor area and up the walls to a level of 2 feet or so; this layer provides a second protective layer of plastic sheeting over the floor, which can then be removed and disposed of easily after the asbestos-containing material that has dropped to the floor has been bagged and removed.

Building Hygiene and Decontamination Facilities

The standard requires that personal protective equipment be left at the point of exit and the person shower immediately. In addition, the movement of equipment, material, and other items to and from the restricted area must be done in a manner that does not contaminate the restricted or nonrestricted areas. This is usually accomplished by the construction of hygiene and decontamination facilities that consist of—

(1) A clean change room;
(2) A shower; and
(3) An equipment room.

The clean change room is an area in which workers remove their street clothes and don their respirators and disposable protective clothing. The clean room should have hooks on the wall or be equipped with lockers for the storage of workers' clothing and personal articles. Extra disposable coveralls and towels can also be stored in the clean change room.

The shower should be contiguous with both the clean and dirty change rooms and should be used by all workers leaving the work area. The shower should also be used to clean asbestos-contaminated equipment and materials, such as the outside of asbestos waste bags and hand tools used in the removal process.

The equipment room (also called the dirty change room) is the area where workers remove their protective coveralls and where equipment that is to be used in the work area can be stored. The equipment room should be lined with 6-mil thick polyethylene plastic sheeting in the same way as was done in the work area enclosure. Two layers of 6-mil polyethylene plastic sheeting that are not taped together form a double flap or barrier between the equipment room and the work area and between the shower and the clean change room.

When feasible, the clean change room shower and equipment room should be contiguous and adjacent to the negative-pressure enclosure surrounding the removal area. In an overwhelming number of cases, hygiene facilities can be built contiguous to the negative-pressure enclosure. In some cases, however, hygiene facilities may have to be located on another floor of the building where removal of asbestos-containing materials is taking place. In these instances, the hygiene facilities can in effect be made to be contiguous to the work area by constructing a polyethylene plastic "tunnel" from the work area to the hygiene facilities. Such a tunnel can be made even in cases where the hygiene facilities are located several floors above or below the work area; the tunnel begins with a double-flap door at the enclosure, extends through the exit from the floor, continues down the necessary number of flights of stairs and goes through a double-flap entrance to the hygiene facilities which have been prepared as described above. The tunnel is constructed of 2-inch by 4-inch lumber or aluminum struts and covered with 6-mil thick polyethylene plastic sheeting.

In the rare instances when there is not enough space to permit any hygiene facilities to be built at the work site, workers should be directed to change into a clean disposable worksuit immediately after exiting the enclosure (without removing their respirators) and to proceed immediately to the shower.

The clean room, shower, and equipment room must be sealed completely to ensure that the sole source of air flow through these areas originates from uncontaminated areas outside the asbestos-removal, demolition, or renovation enclosure. The shower must be drained properly after each use to ensure that contaminated water is not released to uncontaminated areas. If waste is

inadvertently released, it should be cleaned up as soon as possible to prevent any asbestos in the water from drying and becoming airborne in areas outside the work area.

Establishing Negative Pressure Within the Enclosure

After construction of the enclosure is completed, ventilation systems should be installed to create a negative pressure within the enclosure with respect to the area outside the enclosure. Such ventilation systems must be equipped with HEPA filters to prevent the release of asbestos fibers to the environment outside the enclosure and should be operated 24 hours per day during the entire project until the final cleanup is completed and the results of final air samples are received from the laboratory. A sufficient amount of air should be exhausted to create a pressure of −0.02 inches of water within the enclosure with respect to the area outside the enclosure.

These ventilation systems should exhaust the HEPA-filtered clean air outside the building in which the asbestos removal, demolition, or renovation is taking place. If access to the outside is not available, the ventilation system can exhaust the HEPA-filtered asbestos-free air to an area within the building that is as far away as possible from the enclosure. Care should be taken to ensure that the clean air is released either to an asbestos-free area or in such a way as not to disturb any asbestos-containing materials.

A manometer or pressure gauge for measuring the negative pressure within the enclosure should be installed and should be monitored frequently throughout all work shifts during which asbestos removal, demolition, or renovation takes place. Several types of manometers and pressure gauges are available for this purpose.

All asbestos-removal, renovation, and demolition operations should have a program for monitoring the concentration of airborne asbestos and worker exposure to asbestos. Area samples should be collected inside the enclosure (approximately four samples for 5000 square feet of enclosure area). At least two samples should be collected outside the work area, one at the entrance to the clean change room and one at the exhaust of the portable ventilation system. In addition, several breathing-zone samples should be collected from those workers who can reasonably be expected to have the highest potential exposure to asbestos.

Removing Asbestos Materials

It is recommended that a competent person be designated to—

(1) Set up the enclosure;

(2) Ensure the integrity of the enclosure;

(3) Control entry to and exit from the enclosure;

(4) Supervise all exposure monitoring required;

(5) Ensure the use of personal protective clothing and equipment;

(6) Ensure that workers are trained in the use of engineering controls, work practices, and personal protective equipment;

(7) Ensure the use of hygiene facilities and the observance of proper decontamination procedures; and

(8) Ensure that engineering controls are functioning properly.

The competent person will generally be a Certified Industrial Hygienist, an industrial hygienist with training and experience in the handling of asbestos, or a person who has such training and experience as a result of on-the-job training and experience.

Ensuring the integrity of the enclosure is accomplished by inspecting the enclosure before asbestos-removal work begins and prior to each workshift throughout the entire period work is being conducted in the enclosure. The inspection should be conducted by locating all areas where air might escape from the enclosure; this is best accomplished by running a hand over all seams in the plastic enclosure to ensure that no seams are ripped and the tape is securely in place.

The competent person should also ensure that unauthorized personnel do not enter the enclosure and that all workers who enter the enclosure use the hygiene facilities and observe the proper decontamination procedures (described below).

Proper work practices are necessary during asbestos removal, demolition, and renovation to ensure that the concentration of asbestos fibers inside the enclosure remains as low as possible. One of the most important work practices is to wet the asbestos-containing material before it is disturbed. After the asbestos-containing material is thoroughly wetted, it should be removed by scraping (as in the case of sprayed-on or troweled-on ceiling material) or removed by cutting the metal bands or wire mesh that support the asbestos-containing material on boilers or pipes. Any residue that remains on the surface of the object from which asbestos is being removed should be wire-brushed and wet-wiped.

Bagging asbestos waste material promptly after its removal is another work practice control that is effective in reducing the airborne concentration of asbestos within the enclosure. Whenever possible, the asbestos should be removed and placed directly into bags for disposal rather than dropping the material to the floor and picking up all of the material when removal is complete. If a significant amount of time elapses between the time that the material is removed and the time it is bagged, the asbestos material is likely to dry out and generate asbestos-laden dust when it is disturbed by people working within the enclosure. Any asbestos-contaminated supplies and equipment that cannot be decontaminated should be disposed of in prelabeled bags; items in this category include plastic sheeting, disposable work clothing, respirator cartridges, and contaminated wash water.

A checklist is one of the most effective methods of ensuring adequate surveillance of the integrity of the asbestos-removal enclosure. Such a checklist is shown in Figure A–1. Filling out the checklist at the beginning of each shift in which asbestos removal is being performed will serve to document that all the necessary precautions will be taken during the asbestos-removal work. The checklist contains entries for ensuring that—

- The work area enclosure is complete;
- The negative-pressure system is in operation;
- Necessary signs and labels are used;
- Appropriate work practices are used;
- Necessary protective clothing and equipment are used; and
- Appropriate decontamination procedures are being followed.

Cleaning the Work Area

After all of the asbestos-containing material is removed and bagged, the entire work area should be cleaned until it is free of all visible asbestos dust. All surfaces from which asbestos has been removed should be cleaned by wire-brushing the surfaces, HEPA vacuuming these surfaces, and wiping them with amended water. The inside of the plastic enclosure should be vacuumed with a HEPA vacuum and wet-wiped until there is no visible dust in the enclosure. Particular attention should be given to small horizontal surfaces such as pipes, electrical conduits, lights, and support tracks for drop ceilings. All such surfaces should be free of visible dust before the final air samples are collected.

Additional sampling should be conducted inside the enclosure after the cleanup of the work area has been completed. Approximately four area samples should be collected for each 5000 square feet of enclosure area. The enclosure should not be dismantled until the final samples show asbestos concentrations of less than 0.1 f/cc. EPA recommends that a clearance level of 0.01 f/cc be achieved before cleanup is considered complete.

A clearance checklist is an effective method of ensuring that all surfaces are adequately cleaned and the enclosure is ready to be dismantled. Figure A–2 shows a checklist that can be used during the final inspection phase of asbestos abatement, removal, or renovation operations.

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Figure A-1 Checklist

Asbestos Removal, Renovation, and Demolition Checklist

Date: _____ Location: _____

Supervisor _____ Project # _____

Work Area (sq. ft.) _____

	Yes	No
I. Work site barrier		
Floor covered	—	—
Walls covered	—	—
Area ventilation off	—	—
All edges sealed	—	—
Penetration sealed	—	—
Entry curtains	—	—
II. Negative Air Pressure		
HEPA Vac ___, Ventilation system _____		
Constant Operation	—	—
Negative pressure achieved	—	—
III. Signs		
Work area entrance	—	—
Bags labeled	—	—
IV. Work Practices		
Removed material promptly bagged	—	—
Material worked wet	—	—
HEPA vacuum used	—	—
No smoking	—	—
No eating, drinking	—	—
Work area cleaned after completion	—	—
Personnel decontaminated each departure	—	—
V. Protective Equipment		
Disposable clothing use one time	—	—
Proper NIOSH-approved respirators	—	—
VI. Showers		
On site	—	—
Functioning	—	—
Soap and towels	—	—
Used by all personnel	—	—

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Figure A–2.—Clearance Checklist

Field Inspection or Asbestos Removal, Renovation, and Demolition Projects

Date: _____
Project: _____
Location: _____
Building: _____

CHECKLIST:

Residual dust on:	Yes	No
a. Floor		
b. Horizontal surfaces		
c. Pipes		
d. Ventilation equipment		
e. Ducts		
f. Register		
g. Lights		

FIELD NOTES:
Record any problem encountered here.

FINAL AIR SAMPLE RESULTS: _____

Appendix B—Nonmandatory Medical Evaluation Procedures for Respirator Use

This appendix contains recommended elements that should be taken into account during the performance of the required medical evaluation for respirator use. These elements should be evaluated in taking the medical history and performing the medical examination. However, the specific nature of the medical evaluation and the extent of testing performed at left for the responsible physician to determine. This recommended list of elements to be considered is not meant to limit the physician to the testing procedures recommended. The examining physician is free to perform additional tests, if necessary, to determine a person's ability to wear a respirator.

(a) The medical history should include the following:

(1) Previously diagnosed diseases, particularly cardiovascular or respiratory diseases.

(2) Problems associated with breathing during normal work activities.

(3) Past problems with respirator use.

(4) Past and current usage of medication.

(5) Any known physical conditions that may interfere with respirator use.

(6) Previous occupations.

(7) Use of medications whose side effects might affect cardiopulmonary fitness.

(b) The medical examination should assess the following:

(1) Hearing ability. This should be sufficient to ensure communication and response to instructions and alarm systems.

(2) Pulmonary function testing including spirometry for FEV_1 and FVC. Presence and degree of restrictive or obstructive disease or perfusion disorders. In interpreting spirometry, if the FVC is less than 80 percent or the FEV_1 is less than 70 percent, restriction from respirator use should be considered.

(3) Cardiovascular system. Evidence of symptomatic coronary artery disease, significant arrhythmias, occurrence of frequent premature ventricular contraction (PVCs) with elevated pulse rates, or uncontrolled hypertension symptoms.

(4) Endocrine system. Conditions that may result in sudden loss of consciousness or response capability.

(5) Neurological system. Inability to perform coordinated movements and conditions affecting response and consciousness.

(6) Psychological condition. Claustrophobia, severe anxiety.

(7) Miscellaneous conditions specific to the work situation. Skin conditions where occlusive materials may result in symptoms or aggravation of a preexisting dermatitis.

(8) Exercise stress. For those workers who use a self-contained breathing apparatus or rebreather-type respirator under strenuous work conditions, or in emergencies, particularly in fire and rescue operations.

Appendix C—Nonmandatory Fit Testing Protocols

I. Isoamyl Acetate Protocol

(a) *Odor threshold screening.* The odor threshold screening test, performed without wearing a respirator, is intended to determine if the individual tested can detect the odor of isoamyl acetate.

(1) Three 1-liter glass jars with metal lids are required.

(2) Odor-free water (for example, distilled or spring water) at approximately 25 degrees C shall be used for the solutions.

(3) The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor-free water in a 1-liter jar and shaking for 30 seconds. A new solution shall be prepared at least weekly.

(4) The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but shall not be connected to the same recirculating ventilation system.

(5) The odor-test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor-free water using a clean dropper or pipette. The solution shall be shaken for 30 seconds and allowed to stand for 2 to 3 minutes so that the IAA concentration above the liquid may reach equilibrium. This solution shall be used for only 1 day.

(6) A test blank shall be prepared in a third jar by adding 500 cc of odor-free water.

(7) The odor test and test blank jars shall be labeled 1 and 2 for jar identification. Labels shall be placed on the lids so they can be periodically peeled, dried off and switched to maintain the integrity of the test.

(8) The following instruction shall be typed on a card and placed on the table in front of the two test jars (that is, 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

(9) The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

(10) If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test shall not be performed.

(11) If the test subject correctly identifies the jar containing the odor-test solution, the test subject may proceed to respirator selection and fit testing.

(b) *Isoamyl acetate fit test.* (1) The fit-test chamber shall be similar to a clear 55-gallon drum liner suspended inverted over a 2-foot diameter frame so that the top of the chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

(2) Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

(3) After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit-testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

(4) A copy of the test exercises and any prepared text from which the subject is to read shall be taped to the inside of the test chamber. The tests shall include the following:

(i) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.

(ii) Deep breathing. In a normal standing position, the subject shall breathe slowly and deeply, taking caution against hyperventilation.

(iii) Turning head side to side. Standing in place, the subject shall slowly turn the head from side to side between the extreme positions of each side. The head shall be held at each extreme momentarily so that the subject can inhale at each side.

(iv) Moving head up and down. Standing in place, the subject shall slowly move the head up and down. The subject shall be instructed to inhale in the up position (that is, when looking toward the ceiling).

(v) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(iv) Grimace. The test subject shall grimace by smiling or frowning.

(vii) Bending over. The test subject shall bend at the waist as if to touch the toes. Jogging in place shall be substituted for this exercise in those tests environments such as shroud-type QLFT units that prohibit bending at the waist.

(5) Upon entering the test chamber, the test subject shall be given a 6-inch by 5-inch piece of paper towel, or other porous, absorbent, single-ply material, folded in half and wetted with 0.75 cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

(6) Allow 2 minutes for the IAA test concentration to stabilize before starting the fit-test exercises. This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of cooperation, and the purpose for the head exercises; or to demonstrate some of the exercises.

(7) If at any time during the test the subject detects the banana-like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

(8) If the test has failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber and again begin the procedure described in (4) (i) through (vii) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

(9) When a respirator is found that passes the test, its efficiency shall be demonstrated for the subject by having the subject break the face seal and take a breath before exiting the chamber.

(10) When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the test area from becoming contaminated, the used towels shall be kept in a self-sealing bag so there is no significant IAA concentration build-up in the test chamber during subsequent tests.

II. Saccharin Solution Aerosol Protocol

The saccharin solution aerosol QLFT protocol is the only currently available, validated test protocol for use with particulate disposable dust respirators not equipped with high-efficiency filters. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(a) *Taste threshold screening.* The saccharin taste threshold screening, performed without wearing a respirator, is intended to determine whether the individual being tested can detect the taste of saccharin.

(1) During threshold screening as well as during fit testing, subjects shall wear an enclosure about the head and shoulders that is approximately 12 inches in diameter by 14 inches tall with at least the front portion clear and that allows free movements of the head when a respirator is worn. An enclosure substantially similar to the 3M hood assembly, parts # FT 14 and # FT 15 combined, is adequate.

(2) The test enclosure shall have a ¾-inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

(3) The test subject shall don the test enclosure. Throughout the threshold screening test, the test subject shall breathe with the mouth wide open and the tongue extended.

(4) Using a DeVilbiss Model 40 Inhalation Medication Nebulizer the test conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit-test solution nebulizer.

(5) The threshold check solution consists of 0.83 grams of sodium saccharin USP in 1 cc of warm water. It can be prepared by putting 1 cc of the fit-test solution (see (b)(5) below) in 100 cc of distilled water.

(6) To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then released and allowed to fully expand.

(7) Ten squeezes are repeated rapidly and then the test subject is asked whether the saccharin can be tested.

(8) If the first response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(9) If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(10) The test conductor will take note of the number of squeezes required to solicit a taste response.

(11) If the saccharin is not tasted after 30 squeezes (step 10), the test subject may not perform the saccharin fit test.

(12) If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

(13) Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

(14) The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every 14 hours.

(b) *Saccharin solution aerosol fit test procedure.* (1) The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

(2) The fit test uses the same enclosure described in (a) above.

(3) The test subject shall don the enclosure while wearing the respirator selected. Respirators shall be properly adjusted and equipped with particulate filters.

(4) A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit-test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening-test-solution nebulizer.

(5) The fit-test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

(6) As before, the test subject shall breathe through the wide open mouth with tongue extended.

(7) The nebulizer is inserted into the hole in the front of the enclosure and the fit-test solution is sprayed into the enclosure using the same number of squeezes required to elicit a taste response into the screening test.

(8) After generating the aerosol, the test subject shall be instructed to perform the following:

(i) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.

(ii) Deep breathing. In a normal standing position, the subject shall breathe slowly and deeply, taking caution against hyperventilation.

(iii) Turning head side to side. Standing in place, the subject shall slowly turn the head from side to side between the extreme positions of each side. The head shall be held at each extreme momentarily so that subject can inhale at each side.

(iv) Moving head up and down. Standing in place, the subject shall slowly move the head up and down. The subject shall be instructed to inhale in the up position (that is, when looking toward the ceiling).

(v) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(vi) Grimace. The test subject shall grimace by smiling or frowning.

(vii) Bending over. The test subject shall bend at the waist as if to touch the toes. Jogging in place shall be substituted for this exercise in those test environments such as shroud-type QLFT units that prohibit bending at the waist.

(9) Every 30 seconds the aerosol concentration shall be replenished using one-half the number of squeezes as initially.

(10) The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

(11) If the taste of saccharin is detected, the fit is deemed unsatisfactory and a different respirator shall be tried.

III. Irritant Fume Protocol

(a) *Screening procedures.* (1) The respirator to be tested shall be equipped with high-efficiency particulate air (HEPA) filters.

(2) The test subject shall be allowed to smell a weak concentration of the irritant smoke before the respirator is donned to become familiar with its characteristic odor and to determine if the individual is responsive to the smoke.

(b) *Irritant fume fit test procedures.* (1) Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part No. 5445, or equivalent. Attach one end of the smoke tube to a low-flow air pump set to deliver 200 milliliters per minute.

(2) Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep the eyes closed while the test is performed.

(3) The test conductor shall direct the stream of irritant smoke from the smoke tube towards the face seal area of the test subject. The test conductor shall begin at least 12 inches from the facepiece and gradually move to within 1 inch, moving around the whole perimeter of the mask. Alternatively, the test may be conducted in a tent as described in the isoamyl fit-test protocol. The irritant smoke should be introduced through a small hole in the tent until a light, visible concentration of irritant smoke is observed. Throughout the test, additional smoke should be introduced to maintain the concentration.

(4) The following exercises shall be performed by the test subject while the respirator seal is being challenged by the smoke:

(i) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.

(ii) Deep breathing. In a normal standing position, the subject shall breathe slowly and deeply, taking caution against hyperventilation.

(iii) Turning head side to side. Standing in place, the subject shall slowly turn the head from side to side between the extreme positions of each side. The head shall be held at each extreme momentarily so that subject can inhale at each side.

(iv) Moving head up and down. Standing in place, the subject shall slowly move the head up and down. The subject shall be instructed to inhale in the up position (that is, when looking toward the ceiling).

(v) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(vi) Grimace. The test subject shall grimace by smiling or frowning.

(vii) Bending over. The test subject shall bend at the waist as if to touch the toes. Jogging in place shall be substituted for this exercise in those tests environments such as shroud-type QLFT units that prohibit bending at the waist.

(5) Each test subject passing the smoke test without evidence of a response shall be given a sensitivity check of the smoke from the same tube once the respirator has been removed to determine whether the person reacts to the smoke. Failure to evoke a response shall void the fit test.

(6) The fit test shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agent.

PART 70—[AMENDED]

D. It is proposed to amend 30 CFR part 70 as follows:

1. The heading of part 70 is revised to read as follows: "Part 70—Health Standards—Underground Coal Mines".

2. The authority citation for Subpart D is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957 and 961.

§§ 70.300-70.305 [Removed]

3. Sections 70.300—70.305–1 are removed.

4. A new § 70.302 is added to subpart D to read as follows:

Subpart D—Respirable Dust Control Plans

§ 70.302 Respiratory protection; respirable dust.

Respiratory equipment approved for protection against respirable dust under 30 CFR part 11 shall be provided to and properly worn by all miners exposed to concentrations of respirable dust in excess of the levels required to be maintained under this part 70. Use of respirators shall not be substituted for environmental control measures in active workings. Use of respirators under this section shall be in accordance with Subpart D—Respiratory Protection of part 72 of this chapter.

§§ 70.400—70.400–3 (Subpart E) [Removed]

5. Subpart E, consisting of §§ 70.400 through 70.400–3, is removed.

PART 71—[AMENDED]

E. It is proposed to amend 30 CFR part 71 as follows:

1. The authority citation for part 71 is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957, and 961.

2. The heading of part 71 is revised to read as follows: "Part 71—Health Standards—Surface Coal Mines and Surface Work Areas of Underground Coal Mines".

§ 71.700 [Removed]

3. Section 71.700 is removed.

§ 71.701 [Removed]

4. Section 71.701 is removed.

5. The authority citation for subpart D is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957, and 961.

6. A new § 71.302 is added to subpart D to read as follows:

Subpart D—Respirable Dust Control Plans

§ 71.302 Respiratory protection; respirable dust.

Respiratory equipment approved for protection against respirable dust under 30 CFR Part 11 shall be provided to and properly worn by all miners exposed to concentrations of respirable dust in excess of the levels required to be maintained under this Part 71. Use of respirators shall not be substituted for environmental control measures in active workings. Use of respirators under this section shall be in accordance with Subpart D—Respiratory Protection of part 72 of this chapter.

F. It is proposed to add a new part 72 to subchapter O 30 CFR chapter I to read as follows:

PART 72—HEALTH STANDARDS FOR AIR QUALITY, CHEMICAL SUBSTANCES, AND RESPIRATORY PROTECTION AT COAL MINES

Subpart A—General

Sec.
72.1 Scope.
72.2 Definitions.

Subpart B—Air Quality

72.100 Control of exposure to airborne substances.
72.200 Exposure monitoring.
72.300 Dangerous atmospheres.

Subpart C—Carcinogens

72.401 Class 1 carcinogens.
72.402 Class 2 carcinogens.
72.403 Class 3 carcinogens.
72.404 Class 4 carcinogens.
72.405 Asbestos construction work.
72.450 Medical surveillance program.

Subpart D—Respiratory Protection

72.500 Respiratory protection program.
72.550 Medical surveillance program.

Subpart E—Miscellaneous

72.600 Prohibited areas for food and beverages.
72.610 Abrasive blasting.
72.620 Drill dust control at surface mines and surface areas of underground mines.
72.630 Drill dust control at underground areas of underground mines.

Appendix A—Nonmandatory—Work Practices and Engineering Controls for Major Asbestos Removal, Renovation and Demolition Operations

Appendix B—Nonmandatory Medical Evaluation Procedures for Respirator Use

Appendix C—Nonmandatory—Fit Testing Protocols

Authority: 30 U.S.C. 811.

Subpart A—General

§ 72.1 Scope.

The health standards in this part apply to all coal mines.

§ 72.2 Definitions.

The following definitions apply to this part.

Access. The right to examine and copy records.

Confined space. A space that by design has restricted openings for entry and exit, an unfavorable atmosphere that could contain or produce dangerous air contaminants and is not intended for continuous occupancy.

Designated representative. Any individual or organization to whom a miner gives written authorization to exercise a right of access to records.

Permissible exposure limit (PEL). The time-weighted average (TWA), the short-term exposure limit (STEL), the ceiling exposure limit (ceiling) for an airborne substance, or the mixed exposure limit (MEL) for airborne substances.

Qualitative fit test. An assessment of the adequacy of respirator fit by determining whether an individual wearing the respirator can detect the odor, taste, or irritation of a contaminant introduced into the vicinity of the wearer's head.

Quantitative fit test. An assessment of the adequacy of respirator fit by numerically measuring concentrations of a test agent inside and outside the facepiece simultaneously. The ratio of the two measurements is an index of leakage of the seal between the respirator facepiece and the wearer's face.

Respirator protection factor. A measure of the degree of protection provided by a respirator to the wearer.

Subpart B—Air Quality

§ 72.100 Control of exposure to airborne substances.

(a) *Time-weighted average (8 hours)–[TWA_8].* For any workday, 8 hours or less in length, a miner's exposure to an airborne substance shall not exceed the

time-weighted average listed in Table B–1. Exposure shall be calculated by the following formula:

$$\text{Exposure} = \frac{(C_1 \times T_1) + (C_{2K} \times T_2) + \ldots (C_n \times T_n)}{8 \text{ hours}}$$

Where $C_1, C_2, \ldots C_n$ is the concentration of the airborne substance as measured by sample "1", sample "2", through the last sample. $T_1, T_2, \ldots T_n$ is the duration in minutes of the exposure at C_1, C_2, and any other C_n.

(b) *Time-weighted average (novel schedule)–TWA_{ns}.* For workdays longer than 8 hours, full-shift sampling shall be conducted and exposure calculated by the following formula:

$$\text{Exposure} = \frac{(C_1 \times T_1) + (C_2 \times T_2) + \ldots (C_n \times T_n)}{\text{Total Time}}$$

Where $C_1, C_2, \ldots C_n$ is the concentration of the airborne substance as measured by sample "1", sample "2", through the last sample. $T_1, T_2, \ldots T_n$ is the duration in minutes of the exposure at C_1, C_2, and any other C_n. The miner's exposure to an airborne substance listed in Table B–1 shall not exceed the TWA_{ns} as calculated by the following formula:

TWA (Novel Schedule) =

$$\text{TWA (as listed in Table B–1)} \times \frac{8 \text{ hours}}{\text{total time sampled.}}$$

(c) *Short-term exposure limit (STEL) and ceiling limit (C).* A miner's exposure to an airborne substance shall not exceed the short-term exposure limit or ceiling limit (designated by "C") listed in Table B–1. The STEL is a 15-minute time-weighted exposure. If the concentration of a airborne substance exceeds the STEL or ceiling, the mine operator shall take immediate corrective action in accordance with paragraph (e) of this section.

(d) *Mixed exposure limit (MEL).* A miner's combined exposure to two or more airborne substances that act upon the same organ system shall not exceed 1.0 as determined by this formula:

$$\text{Exposure} = \frac{C_a}{PELG5_a} + \frac{C_b}{PEL_b} + \ldots + \frac{C_n}{PEL_n}$$

"C" is the concentration of each substance. The MEL is the TWA_s, TWA_{ns}, short-term exposure limit, or ceiling for each substance. Time-weighted averages and short-term exposure limits are not to be mixed in computing exposure.

(e) *Means of control.* (1) The mine operator shall use feasible engineering or administrative controls to maintain exposure of all miners at or below the permissible exposure limits (PELs) in this section. When appropriate controls do not reduce exposure to the PEL, they shall be used to reduce exposure as low as feasible and supplemented with respiratory protection.

(2) The following factors shall be used to determine whether an engineering or administrative control is feasible:

(i) Nature and extent of the overexposure.

(ii) The demonstrated effectiveness of available technology.

(iii) Whether committed resources would be wholly out of proportion to the expected results.

(3) Respiratory protection shall be used when—

(i) The concentration of an airborne substance exceeds the PEL is areas where controls are being established;

(ii) Controls to reduce exposure to the PEL are not feasible; or

(iii) Occasional entry into hazardous atmospheres is required to perform maintenance, investigation, or emergency cleanup.

(f) *Skin Absorption.* Whenever a miner could have contact with any airborne substance designated by "Skin" in Table B–1 at levels above the PEL, personal protection shall be provided and used to prevent absorption through the skin. Direct skin contact with these substances in a nonairborne form shall also be prevented through use of provided personal protection.

TABLE B–1—PERMISSIBLE EXPOSURE LIMITS

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Common gases:							
Ammonia—BO0875000	25	18	35	27			
Carbon dioxide—FF6400000	5,000	9,000	30,000	54,000			
Carbon monoxide—FG3500000	35	40	200	229			
Hydrogen sulfide—MX1225000	10	14	15	21			
Nitric oxide—QX0525000	25	30					
Nitrogen dioxide—QW9800000	3	6	5	10			
	or						
			1	1.8			
Sulfur dioxide—WS4550000	2	5	5	10			

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Silica dusts:							
Cristobalite—VV7325000	Use one-half the value determined through the quartz formula						
Quartz—VV7330000—See §§701.101, 71.101, and 90.101							
Tridymite—VV7335000	Use one-half the value determined through the quartz formula						
Other substances:							
Acetaldehyde—AB1925000	100	180	150	270			
Acetic acid—AF1225000	10	25	15	37			
Acetic anhydride—AK1925000					5	20	
Acetone—AL3150000	750	1,800	1,000	2,400			
Acetonitrile—AL7700000	40	70	60	105			X
2-Acetylaminofluorene—AB9450000—Restricted use, see §72.401.							
Acetylene—AO9600000—Simple asphyxiant, see §72.300(b).							
Acetylene tetrabromide—KI8225000	1	14					
Acetylsalicylic acid—VO0700000		5					
Acrolein—AS1050000	0.1	0.25	0.3	0.8			
Acrylamide—AS3325000—Restricted use, see also §72.403.		0.03					X
Acrylic acid—AS4375000	2	6					
Acrylonitrile—AT5250000—Restricted use, see also §72.403.	2	4.5					X
Aldrin—IO2100000		0.25					X
Allyl alcohol—BA5075000	2	5	4	10			X
Allyl chloride—UC7350000	1	3	2	6			
Allyl glycidyl ether—RR0875000	5	22	10	44			X
Allyl propyl disulfide—JO0350000	2	12	3	18			
Aluminum:							
Metal and Oxide		10					
Pyro powders		5					
Welding fumes		5					
Soluble salts		2					
Alkyls (not otherwise classified)		2					
4-Aminodiphenyl—DU8925000—Restricted use, see §72.401.							X
2-Aminopyridine—US1575000	0.5	2					
Amitrole—XZ3850000—Restricted use, see also §72.403		0.2					
Ammonium chloride fume—BP4550000		10		20			
Ammonium perfluorooctanoate—RH0782000		0.1					
Ammonium sulfamate—WO6125000		10					
n-Amyl acetate—AJ1925000	100	525					
sec-Amyl acetate—AJ2100000	125	650					
Aniline & homologues	2	8					X
Anisidine (o-,p-isomers)—BZ5410000, BZ5450000	0.1	0.5					X
Antimony & compounds (as Sb)		0.5					
ANTU—YT9275000		0.3					
Argon—CF2300000—Simple asphyxiant, see §72.300(b)							
Arsenic & soluble compounds (as As)		0.2					
Arsine—CG6475000	0.05	0.2					
Asbestos [1]—Restricted use, see also §72.405		.2 fiber/cc		1 fiber/cc			
Asphalt (petroleum) fumes—CI9900000		5					
Atrazine—XY5600000		5					
Azinphos-methyl—TE1925000		0.2					X
Barium, soluble compounds (as Ba)		0.5					
Barium sulfate—CR0600000		10					
Benomyl—DD6475000	0.8	10					
Benzene—CY1400000—Restricted use, see also §72.403	1		5				
Benzidine—DC9625000—Restricted use, see §72.401							X
Benzoyl peroxide—DM8575000		5					
Benzo(a)pyrene—DJ3675000—Restricted use, see §72.401.							
Benzyl chloride—XS8925000	1	5					
Beryllium & compounds—Restricted use, see also §72.404		0.002					
Biphenyl—DU8050000	0.2	1					
Bismuth telluride, Undoped—EB3110000		10					
Bismuth telluride, Se-doped	5						
Borates, tetra, sodium salts all forms		5					
Boron oxide—ED7900000		10					
Boron tribromide—ED7400000					1	10	
Boron trifluoride—ED2275000						1 3	
Bromacil—YQ9100000	1	10					
Bromine—EF9100000	0.1	0.7	0.3	2			
Bromine pentafluoride—EF9350000	0.1	0.7					
Bromoform—PB5600000	0.5	5					X
1,3-Butadiene—EI9275000—Restricted use, see also §72.403.	10	22					
Butane—EI4200000	800	1,900					
2-Butoxyethanol—KJ8575000	25	120					X

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
n-Butyl acetate—AF7350000	150	710	200	950			
sec-Butyl acetate—AF7380000	200	950					
tert-Butyl acetate—AF7400000	200	950					
Butyl acrylate—UD3150000	10	55					
n-Butyl alcohol—EO1400000					50	150	X
sec-Butyl alcohol—EO1750000	100	305					
tert-Butyl alcohol—EO1925000	100	300	150	450			
Butylamine—EO2975000					5	15	X
tert-Butyl chromate—(as CrO_3)—GB2900000						0.1	X
n-Butyl glycidyl ether—TX4200000	25	135					
n-Butyl lactate—OD4025000	5	25					
Butyl mercaptan—EK6300000	0.5	1.5					
o-sec-Butylphenol—SJ6920000	5	30					X
p-tert-Butyltoluene—SX8400000	10	60	20	120			
Cadmium and compounds—Restricted use, see also § 72.404.		.010					
Calcium cyanamide—GS6000000		0.5					
Calcium (hydroxide and oxide forms)—EW2800000, EW3100000.		5					
Camphor, synthetic—EX1225000		2					
Caprolactam—CM3675000:							
Dust		1		3			
Vapor	5	20	10	40			
Captafol—GW4905000		0.1					X
Captan—GW5075000		5					
Carbaryl—FC5950000		5					
Carbofuran—FB9450000		0.1					
Carbon black—FF5800000		3.5					
Carbon disulfide—FF6650000	4	12	12	36			X
Carbon tetrabromide—FG4725000	0.1	1.4	0.3				
Carbon tetrachloride—FG4900000—Restricted use, see also § 72.402.	2	12.6					X
Carbonyl fluoride—FG6125000	2	5	5	15			
Catechol—UX1050000	5	20					X
Cesium hydroxide—FK9800000		2					
Chlordane—PB9800000		0.5					X
Chlorinated camphene—XW5250000		0.5					X
Chlorinated diphenyl oxide—KO4200000		0.5					
Chlorine—FO2100000	0.5	1.5		3			
Chlorine dioxide—FO03000000	0.1	0.3	0.3	0.9			
Chlorine trifluoride—FO2800000					0.1	0.4	
Chloroacetaldehyde—AB2450000					1	3	
Chloroacetone—UC0700000							
αChloroacetophenone—AM63Q0000	0.05	0.3					
Chloroacetyl chloride—AO6475000	0.05	0.2					
Chlorobenzene—CZ0175000	75	350					
o-Chlorobenzylidene malononitrile—OO3675000					0.05	0.4	X
Chlorobromomethane—PA5250000	200	1,050					
Chlorodifluoromethane—PA6390000	1,000	3,500					
Chlorodiphenyl:							
(42% Chlorine)—TQ1356000	1						X
(54% Chlorine)—TQ1360000	0.5						X
Chloroform—FS9100000—Restricted use, see also § 72.403.	2	9.8					
bis(Chloromethyl) ether—KN1575000—Restricted use, see also § 72.401.	0.001	0.005					
Chloromethyl methyl ether—KN6650000—Restricted use, see also § 72.401.							
1-Chloro-1-nitropropane—TX5075000	2	10					
Chloropentafluoroethane—KH7877500	1,000	6,320					
Chloropicrin—PB6300000	0.1	0.7					
βChloroprene—EI9625000	10	35					X
o-Chlorostyrene—WL4160000	50	285	75	430			
o-Chlorotoluene—XS9000000	50	250	75	375			
Chloropyrifos—TF6300000		0.2		0.6			X
Chromium metal—GB4200000		0.5					
Chromium (II) compounds (as Cr)—GB6260000		0.5					
Chromium (III) compounds (as Cr)—GB6261000		0.5					
Chromium (VI) compounds (as Cr)—GB6262000		0.05					
Chromyl chloride—GB5775000	0.025	0.15					
Chrysene—GC0700000—Restricted use see § 72.401.							
Clopidol—UU7711500		10					
Coal tar pitch volatiles (as benzene solubles)—GF8655000—Restricted use, see also § 72.404.		0.2					
Cobalt metal, dust & fume (as Co)		0.05					
Cobalt carbonyl—GG0300000		0.1					
Cobalt hydrocarbonyl (as Co)—GG0900000		0.1					

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Copper:							
Fume		0.2					
Dusts & mists (as Cu)		1					
Creasol (all isomers)—G059500000	5	22					X
Crotonaldehyde—GP9499000	2	6					
Crufomate—TB3850000		5					
Cumene—GR8575000	50	254					X
Cyanamide—GS5950000		2					
Cyanides (as CN)		5					X
Cyanogen—GT1925000	10	20					
Cyanogen chloride—GT2275000					0.3	0.6	
Cyclohexane—GU6300000	300	1,050					
Cyclohexanol—GV7875000	50	200					X
Cyclohexanone—GW1050000	25	100					X
Cyclohexene—GW2500000	300	1,015					
Cyclohexylamine—GX0700000	10	40					
Cyclonite—XY9450000		1.5					X
Cyclopentadiene—GY1000000	75	200					
Cyclopentane—GY2390000	600	1,720					
Cyhexatin—WH8750000		5					
2,4-D—AG6825000		10					
DDT (Dichlorodiphenyl-trichloroethane)—KJ3325000		1					X
Decaborane—HD1400000	0.05	0.3	0.15	0.9			X
Demeton—TF3150000	0.01	0.1					X
Diacetone alcohol—SA9100000	50	240					
Diatomaceous earth (uncalcined)—HL8600000		6					
Diazinon—TF3325000		0.1					X
Diazomethane—PA7000000	0.2	0.4					
Diborane—HQ9275000	0.1	0.1					
2-N-Dibutylaminoethanol—KK3850000	2	14					X
Dibutyl phenyl phosphate—TB9626600	0.3	3.5					X
Dibutyl phosphate—TB9605000	1	5	2	10			
Dibutyl phthalate—TI0875000		5					
Dichloroacetylene—AP1080000					0.1	0.4	
o-Dichlorobenzene—CZ4500000					50	300	
p-Dichlorobenzene—CZ4550000	75	450	110	675			
3,3'-Dichlorobenzidine—DD0525000—Restricted use, see § 72.401.							X
Dichlorodifluoromethane—PA8200000	1,000	4,950					
1,3-Dichloro-5,5-dimethyl hydantoin—MU0700000		0.2		0.4			
1,1-Dichloroethane—KI0175000	200	810	250	1,010			
1,2-Dichloroethylene—KV9360000	200	790					
Dichloroethyl ether	5	30	10	60			X
Dichlorofluoromethane—PA8400000	10	40					
1,1-Dichloro-1-nitroethane—KI1050000	2	10					
Dichloropropene—UC8310000	1	5					X
2,2-Dichloropropionic acid—UF0690000	1	6					
Dichlorotetrafluoroethane—KI1101000	1,000	7,000					
Dichlorvos—TC0350000	0.1	1					X
Dicrotophos—TC3850000		0.25					X
Dicyclopentadiene—PC1050000	5	30					
Dicyclopentadienyl iron—LK0700000		10					
Dieldrin—IO1750000		0.25					X
Diethanolamine—KL2975000	3	15					
Diethylamine—HZ8750000	10	30	25	75			X
2-Diethylaminoethanol—KK5075000	10	50					X
Diethylene triamine—IE1225000	1	4					X
Diethyl ketone—SA8050000	200	705					
Diethyl phthalate—TI1050000		5					
Difluorodibromomethane—PA7525000	100	860					
Diglycidyl ether—KN2350000	0.1	0.5					
Diisobutyl ketone—MJ5775000	25	150					
Diisopropylamine—IM4025000	5	20					X
Dimethyl acetamide—AB7700000	10	35					X
Dimethylamine—IP8750000	10	18					
4-Dimethylaminoazobenzene—BX7350000—Restricted use, see § 72.401.							
N,N-Dimethylaniline—BX4725000	5	25	10	50			X
Dimethyl carbamoyl chloride—FD4200000—Restricted use, see § 72.401.							
Dimethylformamide—LQ2100000	10	30					X
1,1-Dimethylhydrazine—MU2450000—Restricted use, see also § 72.403.	0.5	1					X
Dimethylphthalate—TI1575000		5					
Dimethyl sulfate—WS8225000—Restricted use, see also § 72.403.	0.1	0.5					X
Dinitolmide—XS4200000		5					
Dinitrobenzene (all isomers)	0.15	1					X

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Dinitro-o-cresol—GO9625000		0.2					X
Dinitrotoluene		1.5					X
Dioxane—JG8225000	25	90					X
Dioxathion—TE3350000		0.2					X
Diphenylamine—JJ7800000		10					
Dipropylene glycol methyl ether—JM1575000	100	600	150	900			X
Dipropyl ketone—MJ5600000	50	235					
Diquat—JM5690000		0.5					
Di-sec-octyl phthalate—TI0350000		5		10			
Disulfiram—JO1225000		2					
Disulfoton—TD9275000		0.1					X
2,6-Di-tert-butyl-p-cresol—GO7875000		10					
Diuron—YS8925000		10					
Divinyl benzene—CZ9450000	10	50					
Endosulfan—RB9275000		0.1					X
Endrin—IO1575000		0.1					X
Enflurane—KN6800000	75	575					
Epichlorohydrin—TX4900000	2	8					X
EPN—TB1925000		0.5					X
Ethane—KH3800000—Simple asphyxiant, see § 72.300(b)							
Ethanolamine—KJ5775000	3	8	6	15			
Ethion—TE4550000		0.4					X
2-Ethoxyethanol—KK8050000	5	19					X
2-Ethoxyethyl acetate—KK8225000	5	27					X
Ethyl acetate—AH5425000	400	1,400					
Ethyl acrylate—AT0700000—Restricted use, see also § 72.403.	5	20	15	61			X
Ethyl alcohol—KQA6300000	1,000	1,900					
Ethylamine—KH2100000	10	18					
Ethyl amyl ketone—MJ7350000	25	130					
Ethyl benzene—DA0700000	100	435	125	545			
Ethyl bromide—KH6475000	200	890	250	1,110			
Ethyl butyl ketone—MJ5250000	50	230					
Ethyl chloride—KH7525000	1,000	2,600					
Ethylene—KU5340000—Simple asphyxiant, see § 72.300(b).							
Ethylene chlorohydrin—KK0875000					1	3	X
Ethylenediamine—KH8575000	10	25					
Ethylene dibromide—KH9275000—Restricted use, see § 72.401.							X
Ethylene dichloride—KI0525000—Restricted use, see also § 72.403.	1	4	2	8			
Ethylene glycol, vapor—KW2975000					50	125	
Ethylene glycol dinitrate—KW5600000				0.1			X
Ethylene oxide—KX2450006—Restricted use, see also § 72.403.	1	2	5				
Ethylenimine—KX5075000—Restricted use, see also § 72.402.	0.5	1					X
Ethyl ether—KI5775000	400	1,200	500	1,500			
Ethyl formate—LQ8400000	100	300					
Ethylidene norbornene—RB9450000					5	25	
Ethyl mercaptan—KI9625000	0.5	1					
N-Ethylmorpholine—QE4025000	5	23					X
Ethyl silicate—VV9450000	10	85					
Fenamiphos—TB3675000		0.1					X
Fensulfothion—TF3850000		0.1					
Fenthion—TF9625000		0.2					X
Ferbam—NO6750000		10					
Ferrovanadium dust—LK2900000		1		3			
Fibrous glass dust—LK3651000		10					
Fluorides (as F)		2.5					
Fluorine—LM6475000	1	2	2				
Fonofos—TA5950000		0.1					X
Formaldehyde—LF8925000 Restricted use, see also § 72.403.	1	1.5	2	3			
Formamide—LQ0525000	10	15					X
Formic acid—LQ4900000	5	9	10	18			
Furfural—LT7000000	2	8					X
Furfuryl alcohol—LU9100000	10	40	15	60			X
Gasoline—LX3300000	300	900	500	1,500			
Germanium tetrahydride—LY4900000	0.2	0.6					
Glutaraldehyde—MA2450000					0.2	0.8	
Glycerin (mist)—MA8050000		10					
Glycidol—UB4375000	25	75					
Graphite (all forms)—MD9659600		2, Respirable dust					
Hafnium—MG4600000		0.5					
Halothane—KH6550000	50	400					
Helium—MH6520000—Simple asphyxiant, see § 72.300(b)							

TABLE B–1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Heptachlor—PC0700000		0.5					
Heptane (n-Heptane)—MI7700000	400	1,600	500	2,000			X
Hexachlorobutadiene—EJ0700000—Restricted use, see also §72.403.	0.02	0.24					X
Hexachlorocyclopentadiene—GY1225000	0.01	0.1					
Hexachloroethane—KI4025000	1	10					
Hexachloronaphthalene—QJ7350000		0.2					X
Hexafluoroacetone—UC2450000	0.1	0.7					X
Hexamethylene diisocynate—MO1740000	0.005	0.035					
Hexamethyl phosphoramide—TD0875000—Restricted use, see also §72.401.							X
Hexane:							
n-Hexane—MN9275000	50	180					
other isomers—MO3860000	500	1,800	1,000	3,600			
sec-Hexyl acetate—SA7525000	50	300					
Hexylene glycol—SA0810000					25	125	
Hydrazine—MU7175000—Restricted use, see also §72.403.	0.1	0.1					X
Hydrogen—MW8900000—Simple asphyxiant, see §72.300(b).							
Hydrogenated terphenyls—WZ6535000	0.5	5					
Hydrogen bromide—MW3850000					3	10	
Hydrogen chloride—MW9610000, MW9620000					5	7	
Hydrogen cyanide—MW6825000					10	10	X
Hydrogen fluoride (as F)—MW7875000					3	2.5	
Hydrogen peroxide—MX0900000	1	1.4					
Hydrogen selenide (as Se)—MX1050000	0.05	0.2					
Hydroquinone—MX3500000		2					
2-Hydroxypropyl acrylate—AT1925000	0.5	3					X
Indene—NK8225000	10	45					
Indium & compounds (as In)		0.1					
Iodine—NN1575000					0.1	1	
Iodoform—PB7000000	0.6	10					
Iron oxide fume (Fe_2O_3) (as Fe)—NO7400000		5					
Iron pentacarbonyl (as Fe)—NO4900000	0.1	0.8	0.2	1.6			
Iron salts, soluble (as Fe)		1					
Isoamyl acetate—NS9800000	100	525					
Isoamyl alcohol—EL5425000	100	360	125	450			
Isobutyl acetate—AI4025000	150	700					
Isobutyl alcohol—NP9625000	50	150					
Isooctyl alcohol—NS7700000	50	270					X
Isophorone—GW7700000					5	25	
Isophorone diisocyanate—NQ9370000	0.005	0.045	0.02				X
Isopropoxyethanol—KL5075000	25	105					
Isopropyl acetate—AI4930000	250	950	310	1,185			
Isopropyl alcohol—NT8050000	400	980	500	1,225			
Isopropylamine—NT8400000	5	12	10	24			
N-Isopropylaniline—BY4200000	2	10					X
Isopropyl ether—TZ5425000	500	2,100					
Isopropyl glycidyl ether—TZ3500000	50	240	75	360			
Ketene—OA7700000	0.5	0.9	1.5	3			
Lead, inorganic, dusts & fumes (as Pb)		0.15					
Lead arsenate (as $Pb_3(AsO_4)_2$)—CG0990000		0.15					
Lead chromate (as Cr)—GB2975000—Restricted use, see also §72.403.		0.05					
Lindane—GV4900000		0.5					
Lithium hydride—OJ6300000		0.025					X
L.P.G. (liquified petroleum gas)—SE7545000	1,000	1,800					
Magnesium oxide fume—OM3850000		10					
Malathion—WM8400000		10					
Maleic anhydride—ON3675000	0.25	1					X
Manganese (as Mn):							
Dust & compounds		5					
Fume		1		3			
Manganese cyclopentadienyl tricarbonyl (as Mn)—OO9720000.		0.1					X
Mercury (as Hg):							
Alkyl compounds	0.01		0.03				X
All forms except alkyl							
Vapor	0.05						X
Aryl & inorganic compounds	0.1						X
Mesityl oxide—SB4200000	15	60	25	100			
Methacrylic acid—OZ2975000	20	70					X
Methane—PA1490000—Simple asphyxiant, see §72.300(b)							
Methomyl—AK2975000		2.5					
Methoxychlor—KJ3675000		10					
2-Methoxyethanol—KL5775000	5	16					X
2-Methoxyethyl acetate—KL5950000	5	24					X

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
4-Methoxyphenol—SL7700000		5					
Methyl acetate—AI9100000	200	610	250	760			
Methyl acetylene—UK4250000	1,000	1,650					
Methyl acetylene-propadiene mixture (MAPP)—UK4920000	1,000	1,800	1,250	2,250			
Methyl acrylate—AT2800000	10	35					X
Methylacrylonitrile—UD1400000	1	3					X
Methylal—PA8750000	1,000	3,100					
Methyl alcohol—PC1400000	200	260	250	310			X
Methylamine—PF6300000	10	12					
Methyl n-amyl ketone—MJ5075000	50	235					
N-Methyl aniline—BY4550000	0.5	2					X
Methyl bromide—PA4900000	5	20					X
Methyl n-butyl ketone—MP1400000	5	20					
Methyl chloride—PA6300000	50	105	100	205			
Methyl chloroform—KJ2975000	350	1,900	450	2,450			
Methyl 2-cyanoacrylate—AS7000000	2	8	4	16			
Methylcyclohexane—GV6125000	400	1,600					
Methylcyclohexanol—GW0175000	50	235					
o-Methylcyclohexanone—GW1750000	50	230	75	345			X
2-Methylcyclopentadienyl manganese tricarbonyl (as Mn)—OP1450000.		0.2					X
Methyl demeton—TG1760000		0.5					X
Methylene bisphenyl isocyanate—NQ9350000	0.005	0.055					
Methylene chloride—PA8050000—Restricted use, see also § 72.403.	50	175	500	1,740			
4,4'-Methylene bis(2-chloroaniline)—CY1050000—Restricted use, see also § 72.402.	0.02	0.22					X
Methylene bis(4-cyclo-hexylisocyanate)—NQ9250000	0.005	0.055					
4,4'-Methylene dianiline—BY5425000—Restricted use, see also § 72.403.	0.1	0.8					X
Methyl ethyl ketone—EL6475000	200	590	300	885			
Methyl ethyl ketone peroxide—EL9450000					0.2	1.5	
Methyl formate—LQ8925000	100	250	150	375			
Methyl hydrazine—MV5600000—Restricted use, see also § 72.403.					0.5	0.35	X
Methyl iodide—PA9450000—Restricted use, see also § 72.403.	2	10					X
Methyl isoamyl ketone—MP3850000	50	240					
Methyl isobutyl carbinol—SA350000	25	100	40	165			X
Methyl isobutyl ketone—SA9275000	50	205	75	300			
Methyl isocyanate—NQ9450000	0.02	0.05					X
Methyl isopropyl ketone—EL9100000	200	705					
Methyl mercaptan—PB4375000	0.5	1					
Methyl methacrylate—OZ5075000	100	410					
Methyl parathion—TG0175000		0.2					X
Methyl propyl ketone—SA7875000	200	700	250	875			
Methyl silicate—VV9800000	1	6					
α-Methyl styrene—WL5075300	50	240	100	485			
Metribuzin—XZ2990000		5					
Mevinphos—GQ5250000	0.01	0.1	0.03	0.3			X
Mica—VV8760000		3, Respirable dust					
Mineral wool fiber		10					
Molybdenum (as Mo):							
Soluble compounds		5					
Insoluble compounds		10					
Monocroptophos—TC4375000		0.25					
Morpholine—QD6475000	20	70	30	105			X
Naled—TB9450000		3					X
Naptha (Coal Tar—DE3030000	100	400					
Naphthalene—QJ05250000		10	50	15	75		
α-Naphthylamine—QM1400000—Restricted use, see § 72.401.							
β-Naphthylamine—QM2100000—Restricted use, see § 72.401.							
Neon—QP4450000—Simple asphyxiant, see § 72.300(b)							
Nickel:							
Metal—QR5950000		1					
Soluble compounds (as Ni)		0.1					
Nickel carbonyl (as Ni)—QR6300000	0.001	0.007					
Nicotine—Q52500000		0.5					X
Nitrapyrin—US7525000		10		20			
Nitric acid—QU5775000	2	5	4	10			
p-Nitroaniline—BY7000000		3					X
Nitrobenzene—DA6475000	1	5					X
p-Nitrochlorobenzene—CZ1050000	0.1	0.6					X
4-Nitrodiphenyl—DV5600000—Restricted use, see § 72.401.							
Nitroethane--KI5600000	100	310					

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Nitrogen—QW9700000—Simple asphyxiant, see § 72.300(b).							X
Nitrogen trifluoride—QX1925000	10	29					
Nitroglycerin—QX2100000				0.1			X
Nitromethane—PA9800000	100	250					
1-Nitropropane—TZ5075000	25	90					
2-Nitropropane—TZ5250000—Restricted use, see also § 72.403.	10	35					
N-Nitrosodimethylamine—IQ0525000—Restricted use, see § 72.401.							X
Nitrotoluene (o-,m-,p-isomers)—XT3150000, XT2975000, XT3325000.	2	11					X
Nitrous oxide—QX1350000	50	91					
Nonane—RA6115000	200	1,050					
Octachloronaphthalene—QK0250000		0.1		0.3			X
Octane—RG8400000	300	1,450	375	1,800			
Oil mist, mineral—PY8030000		5		10			
Osmium tetroxide (as Os)—RN1140000	0.0002	0.002	0.0006	0.006			
Oxalic acid—RO2450000		1		2			
Oxygen difluoride—RS2100000					0.05	0.1	
Ozone—RS8225000					0.1	0.2	
Paraffin wax fume—RV0350000		2					
Paraquat, respirable dust—DW1960000		0.1					X
Parathion—TF4550000		0.1					X
Pentaborane—RY8925000	0.005	0.01	0.015	0.03			
Pentachloronaphthalene—QK0300000		0.5					X
Pentachlorophenol—SM6300000		0.5					X
Pentane—RZ9450000	600	1,800	750	2,250			
Perchloroethylene—KX3850000—Restricted use, see also § 72.403.	25	170					
Perchloromethyl mercaptan—PB0370000	0.1	0.8					
Perchloryl fluoride—SD1925000	3	14	6	28			
Perlite—SD5254000		10					
Phenol—SJ3325000	5	19					X
Phenothiazine—SN5075000		5					X
N-Phenyl-β-naphthylamine—QM4550000—Restricted use, see § 72.401.							
p-Phenylene diamine—SS8050000		0.1					X
Phenyl ether vapor—KN8970000	1	7	2	14			
Phenyl glycidyl ether—TZ3675000	1	6					
Phenylhydrazine—MV8925000—Restricted use, see also § 72.403.	5	20	10	45			X
Phenyl mercaptan—DC0525000	0.5	2					
Phenylphosphine—SZ2100000					0.05	0.25	
Phorate—TD9450000		0.05		0.2			X
Phosgene—SY5600000	0.1	0.4					
Phosphine—SY7525000	0.3	0.4	1	1			
Phosphoric acid—TB6300000		1		3			
Phosphorus (yellow)—TH3500000		0.1					
Phosphorus oxychloride—TH4897000	0.1	0.6					
Phosphorus pentachloride—TB6125000	0.1	1					
Phosphorus pentasulfide—TH4375000		1		3			
Phosphorus trichloride—TH3675000	0.2	1.5	0.5	3			
Phthalic anhydride—TI3150000	1	6					
m-Phthalodinitrile—CZ1900000		5					
Picloram—TJ7525000		10		20			
Picric acid—TJ7875000		0.1		0.3			X
Pindone—NK6300000		0.1					
Piperazine dihydrochloride—TL4025000		5					
Platinum:							
Metal—TP2160000		1					
Soluble salts (as Pt)		0.002					
Portland cement—VV8770000		10					
Potassium hydroxide—TT2100000						2	
Propane—TX2275000—Simple asphyxiant, see § 72.300(b)							
Propane sultone—RP5425000—Restricted use, see § 72.401.							
Propargyl alcohol—UK5075000	1	2					X
β-Propiolactone—RQ7350000—Restricted use, see also § 72.402.	0.5	1.5					
Propionic acid—UE5950000	10	30					
Propoxur—FC3150000		0.5					
n-Propyl acetate—AJ3675000	200	840	250	1,050			
Propyl alcohol—UH8225000	200	500	250	625			
Propylene—UC6740000—Simple asphyxiant, see § 72.300(b).							
Propylene dichloride—TX9625000	75	350	110	510			
Propylene glycol dinitrate—TY6300000	0.05	0.3					X

TABLE B-1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Propylene glycol monomethyl ether	100	360	150	540			
Propylene imine—CM8050000—Restricted use, see also § 72.403.	2	5					X
Propylene oxide—TZ2975000	20	50					
n-Propyl nitrate—UK0350000	25	105	40	170			
Pyrethrum—UR4200000		5					
Pyridine—UR8400000	5	15					
Quinone—DK2625000	0.1	0.4					
Resorcinol—VG9625000	10	45	20	90			
Rhodium:							
Metal—VI9069000		1					
Insoluble compounds (as Rh)		1					
Soluble compounds (as Rh)		0.01					
Ronnel—TG0525000		10					
Rosin core solder pyrolysis products (as formaldehyde)		0.1					
Rotenone (commercial)—DJ2800000		5					
Rubber solvent—VL8047000	400	1,600					
Selenium compounds (as Se)		0.2					
Selenium hexafluoride (as Se)—VS9450000	0.05	0.2					
Sesone—KK4900000		10					
Silicon—VW0400000		6					
Silicon carbide—VW0450000		6					
Silicon tetrahydride—VV1400000	5	7					
Silver:							
Metal, dust & fume		0.01					
Soluble compounds (as Ag)		0.01					
Soapstone—VV8780000							
Respirable		3					
Total		6					
Sodium azide—VV8050000							
as HN_3 vapor					0.1		X
as NaN_3						0.3	X
Sodium bisulfite—VZ2000000		5					
Sodium fluoracetate—AH9100000		0.05		0.15			X
Sodium hydroxide—WB4900000						2	
Sodium metabisulfite—UX8225000		5					
Stibine—WJ0700000	0.1	0.5					
Stoddard solvent—WJ8925000	100	525					
Strychnine—WL2275000		0.15					
Styrene, monomer—WL3675000	50	215	100	425			
Subtilisins (Proteolytic enzymes as 100% pure crystalline enzyme)—CO9450000, CO9550000.						0.00006	
Sulfotep—XN4375000		0.2					X
Sulfur hexafluoride—WS4900000	1,000	6,000					
Sulfuric acid—WS5600000		1		3			
Sulfur monochloride—WS4300000					1	6	
Sulfur pentafluoride—WS4480000					0.01	0.1	
Sulfur tetrafluoride—WT4800000					0.1	0.4	
Sulfuryl fluoride—WT5075000	5	20	10	40			
Sulprofos—TE4165000		1					
2,4,5-T—AJ8400000		10					
Talc (containing no asbestos fibers)—WW2710000		2.5, Respirable dust					
Talc (containing asbestos fibers)—WW2700000—Use asbestos PEL.							
Tantalum—WW5505000		5					
Tellurium & compounds (as Te)		0.1					
Tellurium hexafluoride (as Te)—WY2800000	0.02	0.2					
Temephos—TF6890000		10					
TEPP—UX6825000	0.004	0.05					X
Terphenyls—WZ6450000					0.5	5	
1,1,1,2-Tetrachloro-2,2-difluoroethane—KI1425000	500	4,170					
1,1,2,2-Tetrachloro-1,2-difluoroethane—KI1420000	500	4,170					
1,1,2,2-Tetrachloroethane—KI8575000	1	7					X
Tetrachloronaphthalene—QK3700000		2					X
Tetraethyl lead (as Pb)—TP4550000		0.075					X
Tetrahydrofuran—LU5950000	200	590	250	735			
Tetramethyl lead (as Pb)—TP4725000		0.075					X
Tetramethyl succinonitrile—WN4025000	0.5	3					X
Tetranitromethane—PB4025000	1	8					
Tetrasodium pyrophosphate—UX7350000		5					
Tetryl—BY6300000		1.5					
Thallium, soluble compounds (as Tl)		0.1					X
4,4'-Thiobis(6-tert-butyl-m-cresol)—GP3150000		10					
Thioglycolic acid—AI5950000	1	4					X
Thionyl chloride—XM5150000					1	5	
Thiram—JO1400000		1					
Tin							
Metal—XI7320000		2					

TABLE B–1—PERMISSIBLE EXPOSURE LIMITS—Continued

Substance and RTEC's number	TWA		STEL		Ceiling		Skin
	ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Oxide & inorganic compounds, except SnH_4 (as Sn)		2					
Organic compounds (as Sn)		0.1		0.2			X
o-Tolidine—DD1225000—Restricted use, see § 72.401							X
Toluene—XS5250000	100	375	150	560			
Toluene-2,4-diisocyanate—CZ6300000	0.005	0.04	0.02	0.15			
o-Toluidine—XU2975000—Restricted use, see also § 72.403.	2	9					X
m-Toluidine—XU2800000	2	9					X
p-Toluidine—XU3150000—Restricted use, see also § 72.403.	2	9					X
Tributyl phosphate—TC7700000	0.2	2.5					
Tricholoracetic acid—AJ7875000	1	7					
1,2,4-Trichlorobenzene—DC2100000					5	40	
1,1,2-Trichloroethane—KJ3150000	10	45					X
Trichloroethylene—KX4550000	50	270	200	1,080			
Trichlorofluoromethane—PB6125000					1,000	5,600	
Trichloronaphthalene—QK4025000		5					X
1,2,3-Trichloropropane—TZ9275000	10	60					X
1,1,2-Trichloro-1,2,2-trifluoroethane—KJ4000000	1,000	7,600	1,250	9,500			
Triethylamine—YE0175000	10	40	15	60			
Trifluorobromomethane—PA5425000	1,000	6,100					
Trimellitic anhydride—DC2050000	0.005	0.04					
Trimethylamine—PA0350000	10	24	15	36			
Trimethyl benzene—DC3220000	25	125					
Trimethyl phosphite—TH1400000	2	10					
2,4,6-Trinitrotoluene—XU0175000		0.5					X
Triorthocresyl phosphate—TD0350000		0.1					X
Triphenyl amine—YK2680000		5					
Triphenyl phosphate—TC8400000		3					
Tungsten (as W)							
Insoluble compounds		5		10			
Soluble compounds		1		3			
Turpentine—YO8400000	100	560					
Uranium (as U)							
Soluble compounds		0.05					
Insoluble compounds		0.2		0.6			
n-Valeraldehyde—YV3600000	50	175					
Vanadium metal and vanadium carbide (as V)—YW1355000, YW1400000.		1					
Vanadium compounds (as V)						0.05	
Vinyl acetate—AK0875000	10	30	20	60			
Vinyl bromide—KU8400000—Restricted use, see also § 72.403.	5	20					
Vinyl chloride—KU9625000—Restricted use, see also § 72.402.	1		5				
Vinyl cyclohexene dioxide—RN8640000—Restricted use, see also § 72.403.	10	60					X
Vinylidene chloride—KV9275000	1	4					
Vinyl toluene—WL5075000	50	240	100	485			
VM & P Naphtha—OI6180000	300	1,350					
Warfarin—GN4550000		0.1					
Welding fumes not otherwise classified		5					
Wood dust—ZC9850000							
Hard wood		1					
Soft wood		5		10			
Xylene (o-,m-,p-isomers):							
ZE2450000, ZE2275000	100	435	150	655			
ZE2625000	100	435	150	655			
m-Zylene α,α'-diamine—PF8970000						0.1	X
Xylidine—ZE8575000—Restricted use, see also § 72.403	0.5	2.5					X
Yttrium—ZG2980000		1					
Zinc chloride fume—ZH1400000		1					
Zinc chromate (as Cr)—GB3290000, GB3300000—Restricted use, see also § 72.403.		0.01					
Zinc oxide fume—AH4810000		5		10			
Zirconium compounds (as Zr)		5		10			

[1] Fibers greater than 5 microns in length, as determined by the membrane filter method at 400–450 magnification (4 millimeter objective) phase contrast illumination. Asbestos is defined as chrysotile, amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos and any of these minerals that have been chemically treated or altered.

§ 72.200 Exposure monitoring.

(a) *Frequency.* For miners exposed to substances listed in Table B–1, the mine operator shall monitor their exposure—

(1) When the operator has reason to believe that a change in production, process, materials, equipment, or engineering or administrative controls would increase a substance's concentration above the PEL;

(2) Upon installation of controls;

(3) Upon modification of controls used to reduce exposure to the PEL; and

(4) At least once every 3 three if respirators are required to be worn because a substance's concentration is about the PEL.

(b) *Cessation of monitoring.* Monitoring required by paragraphs (a)(1), (a)(2) and (a)(3) of this section shall no longer be required when airborne concentrations are determined to be at or below the PEL with 95 percent confidence.

(c) *Monitoring procedures.* Monitoring samples shall be—

(1) Representative of the affected miners' exposures;

(2) Collected and analyzed by appropriate instrumentation and methods. Instruments used to measure exposures shall be maintained and calibrated; and

(3) Collected and analyzed by a person trained or experienced in the monitoring procedures.

(d) *Recordkeeping.* The mine operator shall record the results of required exposure monitoring and retain these records for 5 years. These records shall include the following:

(1) Date of sampling.

(2) Name of miner or location of work area where each sample was collected.

(3) Substances sampled.

(4) Sampling and analytical method used, including error factor.

(5) Time or duration of each sample.

(6) Concentrations of each substance determined by sampling.

(7) Names of persons conducting the sampling and analysis.

(8) The corrective action being taken if exposure exceeds the PEL.

(e) *Access to exposure records.* (1) Upon request, the mine operator shall ensure immediate access to exposure records to the following:

(i) Miners whose exposures are included in the records.

(ii) The miners' representative for miners whom they represent.

(iii) The miner's designated representative.

(iv) Authorized representatives of the Secretary of Labor or the Secretary of Health and Human Services.

(2) Former employees shall have access to their exposure records during the 5-year retention period.

(3) A copy of the record shall be provided without cost to the miner or representative.

(4) Whenever a mine operator is ceasing to do business, the operator shall transfer all records subject to this section to the successor operator shall receive and maintain these records for the period required by this section. Whenever an operator is ceasing to do business and there is no successor operator to receive and maintain the records subject to this section, the operator shall notify the affected employees of their rights of access to records at least 3 months prior to disposal of the records.

(f) *Observation of monitoring.* The mine operator shall provide affected miners or their representatives with an opportunity to observe exposure monitoring required by this section.

(g) *Notification of overexposure.* When a sample indicates that a miner's exposure exceeds the PEL for any substance listed in Table B–1, the mine operator shall notify the miner in writing within 15 calendar days following receipt of sampling results of the overexposure and the corrective action being taken.

§ 72.300 Dangerous atmospheres.

(a) The atmosphere shall be tested for suspected hazardous gases and vapors and oxygen deficiency prior to entrance into any of the following areas:

(1) Silos, vats, tanks, and other confined spaces with atmospheres that could contain or produce dangerous levels of air contaminants.

(2) Areas where there has been a liberation of contaminants in sufficient quantities that could result in acute respiratory exposure that poses an immediate threat of loss of life, immediate or delayed irreversible adverse health effects, or acute eye exposure that would prevent escape from a hazardous atmosphere (IDLH atmosphere).

(b) Air in work areas shall contain at least 19.5 percent oxygen by volume. If the oxygen content of the air falls below 19.5 percent, all miners affected shall be withdrawn unless they are using respiratory protection in accordance with § 72.500, and immediate action shall be taken to restore the level to at least 19.5 percent.

(c) The following precautions shall be taken when entering a dangerous atmosphere in an area listed in paragraph (a) of this section or an oxygen-deficient atmosphere listed in paragraph (b) of this section:

(1) Respiratory protection shall be used in accordance with the respiratory protection program required by § 72.500.

(2) There shall be two standby persons outside the affected area with backup equipment and rescue capabilities, or one standby person with appropriate equipment outside the affected area who could rescue the other person without the affected area who could rescue the other person without entering the area.

(3) Communication (visual, voice, signal-box, radio or other means) shall be maintained with the persons exposed.

Subpart C—Carcinogens

§ 72.401 Class 1 carcinogens.

(a) Liquids, solids, or gases containing class 1 carcinogens in concentrations that exceed those listed in Table C–1 shall not be processed, used, handled, packaged, or stored except under restricted-use conditions and procedures approved by MSHA. At a minimum, the conditions and procedures shall include specifications for the use of engineering controls, personal protection, and administrative measures that ensure virtually no contact with a class 1 carcinogen. The conditions and procedures shall also include emergency and decontamination procedures, monitoring and training requirements associated with the class 1 carcinogen. Exposure to class 1 carcinogens that have PELs on Table B–1 shall be further controlled in accordance with § 72.100 of this part. Rotation of workers shall not be used to comply with the PEL.

(b) *Approval procedures.* The mine operator shall submit proposed conditions or procedures for class 1 carcinogens for approval to the Administrator, Metal and Nonmetal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(1) The Administrator shall approve or disapprove the operator's submission within 120 days from its receipt by MSHA. The Administrator shall notify the operator in writing of specific reasons for disapproval of any condition or procedure and provide the operator with an opportunity to discuss necessary changes.

(2) The operator shall notify the Administrator of any significant change or modification in conditions or procedures approved by MSHA.

(3) Approval of the conditions or procedures may be revoked if, based on new evidence unavailable at the time of approval, MSHA finds that they are inadequate to protect the health of miners. The Administrator shall notify the operator in writing of modifications that must be made in order for the operator to retain use approval. The Administrator shall provide a reasonable opportunity to implement the changes before MSHA revokes the operator's approval.

(2) *Appeal procedures.* A decision by the Administrator to disapprove or revoke approval of any part of an operator's conditions or procedures may be appealed to the Assistant Secretary for Mine Safety and Health, 4015 Wilson

Boulevard, Arlington, Virginia 22203. The appeal shall be submitted within 30 days of notification of the decision made by the Administrator. The Assistant Secretary shall provide a written determination to the operator within 30 days of receipt of the appeal.

(3) *Availability of approval.* The operator shall make a copy of the MSHA-approved conditions or procedures available at the mine site for inspection by MSHA and examination by miners and their representatives.

TABLE C–1.—CLASS 1 CARCINOGENS

Carcinogen	Concentration, percent (weight or volume)
2-Acetylaminofluorene	.1
4-Aminodiphenyl	.1
Benzidine	.1
Benzo(a)pyrene (commercially manufactured)	.1
bis(Chloromethyl) ether	.1
Chloromethyl methyl ether	.1
Chrysene (commercially manufactured)	.1
3,3'-Dichlorobenzidine	.1
4-Dimethylaminoazobenzene	.1
Dimethyl carbamoyl chloride	.1
Ethylene dibromide	.1
Hexamethyl phosphoramide	.1
α-Naphthylamine	.1
β-Naphthylamine	.1
4-Nitrodiphenyl	.1
N-Nitrosodimethylamine	.1
N-Phenyl-β-naphthylamin	.1
Propane sultone	.1
o-Tolidine	.1

§ 72.402 Class 2 carcinogens.

Exposure to liquids, solids, or gases containing class 2 carcinogens in concentrations that exceed those listed in Table C–2 shall be controlled by implementation of the following requirements. Exposure to class 2 carcinogens that have PELs on Table B–1 shall also meet the requirements of § 72.100 of this part. Rotation of workers shall not be used to comply with the PEL.

(a) The mine operator shall establish a restricted area where a class 2 carcinogen is processed, used, packaged, handled, or stored.

(b) Entrances to the restricted area shall be posted with signs stating the nature of the hazard. Appropriate instructions shall be posted informing persons of the procedures that must be followed when entering or leaving the restricted area.

(c) Storage or consumption of food, beverages, smoking products, tobacco products, or products for chewing and application of cosmetics shall not be permitted in the restricted area.

(d) The restricted area shall be controlled by engineering controls and administrative measures to prevent contamination of nonrestricted areas.

(e) The introduction or removal of any equipment, material, or other items to or from restricted areas shall be done in a manner that does not contaminate nonrestricted areas.

(f) Containers of class 2 carcinogens or materials contaminated by them shall be clearly marked and their contents identified. The containers shall be stored in a manner that prevents contamination of restricted or nonrestricted areas.

(g) Class 2 carcinogens shall be processed or used in an isolated system, closed system, laboratory-type hood, or in any system that offers equivalent protection against entry of the substances into a restricted or nonrestricted area.

(h) At the beginning of each shift, prior to entering a restricted area, miners shall be provided with and wear clean, full-body protective clothing (such as smocks, coveralls, or long-sleeved shirts and pants), work shoes or shoe covers, gloves, and other appropriate personal protection.

(i) Prior to exiting a restricted area, miners shall remove and leave protective clothing and equipment at the point of exit. At the last exit of the day, miners shall place clothing and equipment in impervious containers at the point of exit for purposes of decontamination and disposal.

(j) Miners shall wash hands, forearms, face and neck at each exit from a restricted area close to the point of exit and before engaging in other activities.

(k) Miners shall shower after the last exit of the day.

(l) Written decontamination, disposal, and emergency procedures shall be developed and implemented for the restricted area and process.

(m) At least once every 12 months, the mine operator shall monitor to evaluate the continued effectiveness of controls and decontamination procedures, using appropriate instrumentation and methods.

(n) Prior to initial assignment and at least once every 12 months, miners required to enter the restricted area or who are involved in maintenance on contaminated equipment, decontamination, disposal, and emergency response shall receive training on the risks and hazards of the class 2 carcinogens being used and the decontamination and emergency procedures to be followed.

TABLE C–2.—CLASS 2 CARCINOGENS

	Concentration, percent (weight or volume)
Carbon tetrachloride	.1
Ethylenimine	.1
4,4'-Methylene bis(2-chloroaniline)	.1
β-Propiolactone	.1
Vinyl chloride	.1

§ 72.403 Class 3 carcinogens.

Exposure to liquids, solids, or gases containing class 3 carcinogens in concentrations that exceed those listed in Table C–3 shall be controlled by implementation of the following requirements. Exposure to class 3 carcinogens that have PELs on Table B–1 shall also meet the requirements of § 72.100 of this part. Rotation of workers shall not be used to comply with the PEL.

(a) The mine operator shall establish a restricted area where a class 3 carcinogen is found to be above the PEL or STEL or may be anticipated to be above the PEL or STEL.

(b) Entrances to the restricted area shall be posted with signs stating the nature of the hazard. Appropriate instructions shall be posted informing persons of the procedures that must be followed when entering or leaving the restricted area.

(c) Storage or consumption of food, beverages, smoking products, tobacco products, or products for chewing and application of cosmetics shall not be permitted in the restricted area or in any area where these items may come into direct contact with the carcinogen.

(d) The restricted area shall be controlled by engineering and administrative measures.

(e) The introduction or removal of any equipment, material, or other items to or from restricted areas, or equipment materials, or other items contaminated with the carcinogen, shall be done in a manner that does not contaminate nonrestricted areas.

(f) Containers of class 3 carcinogens or materials contaminated by them shall be clearly marked and their contents identified. The containers shall be stored in a manner that prevents contamination of restricted or nonrestricted areas.

(g) For emergency control activities and where direct contact with the carcinogen is possible, miners shall be provided with and wear clean, full-body protective clothing (such as smocks, coveralls, or long-sleeved shirts and

pants), work shoes or shoe covers, gloves, and other appropriate personal protection.

(h) Prior to the end of the shift and after completion of emergency control activities or any work involving direct contact with the carcinogen, miners shall place protective clothing and equipment in impervious containers for purposes of decontamination and disposal.

(i) After completion of emergency control activities or any work involving direct contact with the carcinogen, miners shall wash hands, forearms, faces and neck before engaging in other activities and shower at the end of the shift.

(j) Written decontamination, disposal, and emergency procedures shall be developed and implemented for the restricted area and process.

(k) At least once every 12 months, the mine operator shall monitor to evaluate the continued effectiveness of controls and decontamination procedures, using appropriate instrumentation and methods.

(l) Prior to initial assignment and at least once every 12 months, miners required to enter the restricted area or who are involved in maintenance on contaminated equipment, decontamination, disposal, and emergency response shall receive training on the risks and hazards of the class 3 carcinogens being used and the decontamination and emergency procedures to be followed.

TABLE C–3.—CLASS 3 CARCINOGENS

	Concentration, percent (weight or volume)
Acrylamide	.1
Acrylonitrile	.1
Amitrole	.1
Benzene	5.0
1,3-Butadiene	.1
Chloroform	.1
1,1-Dimethylhydrazine	.1
Dimethyl sulfate	.1
Ethyl acrylate	.1
Ethylene dichloride	.1
Ethylene oxide	.1
Formaldehyde	.1
Hexachlorobutadiene	.1
Hydrazine	.1
Lead chromate	5.0
Methylene chloride	.1
4,4'-Methylene dianiline	.1
Methyl hydrazine	.1
Methyl iodide	.1
2-Nitropropane	.1
Perchloroethylene	.1
Phenylhydrazine	.1
Propylene imine	.1
o-Toluidine	.1
p-Toluidine	.1
Vinyl bromide	.1
Vinyl cyclohexene dioxide	.1
Xylidine	.1
Zinc chromate	5.0

TABLE C–3.—CLASS 3 CARCINOGENS—Continued

	Concentration, percent (weight or volume)
Vinyl cyclohexene dioxide	.1
Xylidine	.1
Zinc chromate	5.0

§ 72.404 Class 4 carcinogens.

Exposure to liquids, solids, or gases containing class 4 carcinogens in concentrations exceeding those listed in Table C-4 or a process listed in Table C-4 shall be controlled by implementation of the following requirements. Exposure to class 4 carcinogens that have PELs on Table B-1 shall also meet the requirements of § 72.100 of this part. Rotation of workers shall not be used to comply with te PEL.

(a) The area where a class 4 carcinogen is processed, packaged, used, handled, or stored shall be restricted to essential personnel.

(b) Entrances to the restricted area shall be posted with signs stating the nature of the hazard. Appropriate instructions shall be posted informing miners of the procedures that must be followed when entering or leaving the restricted area.

(c) Storage or consumption of food, beverages, smoking products, tobacco products, or products for chewing and application of cosmetics shall not be permitted in the restricted area.

(d) At the beginning of each shift, prior to entering the restricted area, miners shall be provided with and wear clean, full-body protective clothing (such as smocks, coveralls, or long-sleeved shirts and pants), work shoes or shoe covers, gloves, and other appropriate personal protection.

(e) Prior to exiting a restricted area, miners shall remove and leave protective clothing and equipment at the point of exit. At the last exit of the day, miners shall place clothing and equipment in impervious containers at the point of exit for purposes of decontamination and disposal.

(f) Miners shall wash hands, forearms, face and neck at each exit from a restricted area close to the point of exit and before engaging in other activities.

(g) Miners shall shower upon the last exit of the day.

(h) Containers of class 4 carcinogens shall be clearly marked and their contents identified. The containers shall be stored in a manner that prevents contamination of restricted or nonrestricted areas.

(i) Written decontamination, disposal and emergency procedures shall be developed and implemented for the restricted area and process.

(j) At least once every 12 months, the mine operator shall monitor to evaluate the continued effectiveness of controls and decontamination procedures, using appropriate instrumentation and methods.

(k) Prior to initial assignment and at least once every 12 months, miners required to enter the restricted area or who are involved in decontamination, disposal, and emergency response shall receive training on the risks and hazards of the class 4 carcinogens being used and the decontamination and emergency procedures to be followed.

TABLE C–4.—CLASS 4 CARCINOGENS

	Concentration, percent (weight or volume)
Beryllium and compounds (except welding)	.1
Cadium and compounds (except welding)	.1
Coal tar pitch volatiles	2.0

§ 72.405 Asbestos construction work.

Exposure to asbestos resulting from asbestos construction shall be controlled by implementation of the following requirements. Exposure to asbestos in these situations shall also meet the requirements of § 72.100 of this part. Rotation of workers shall not be used to comply with the PEL. For purposes of this section, asbestos construction work means construction work such as demolition or salvage of structures where asbestos is present; installation, removal, or encapsulation of asbestos and materials containing greater than 0.1 percent asbestos; spill and emergency cleanup of asbestos and material containing greater than 0.1 percent asbestos; transportation, disposal, storage or containment of asbestos or materials containing greater than 0.1 percent asbestos on the site or location at which construction activities are performed.

(a) The operator shall designate a person to be responsible for the asbestos construction work who will have authority to take prompt corrective action to eliminate hazards. This person shall have had comprehensive training on the hazards of asbestos and asbestos construction work, such as a course conducted by an EPA Asbestos Training Center, or be a certified industrial hygienist (C.I.H.) certified by the

American Board of Industrial Hygiene, or be certified for asbestos construction work by a state program.

(b) The area where asbestos construction work is being done shall be restricted to essential personnel.

(c) Entrances to the restricted area shall be posted with signs stating the nature of the hazard. Appropriate instrucitons shall be posted informing miners of the procedures that must be followed when entering or leaving the restricted area.

(d) Storage or consumption of food, beverages, smoking products, tobacco products, or products for chewing and application of cosmetics shall not be permitted in the restricted area.

(e) At the beginning of each shift, prior to entering a restricted area, miners shall be provided with and wear clean, full-body protective clothing (such as coveralls, or long-sleeved shirts and pants), work shoes or shoe covers, gloves, head covers, and other appropriate personal protection.

(f) Prior to existing a restricted area, miners shall remove and leave protective clothing and equipment at the point of exit. At the last exit of the day, miners shall place clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal.

(g) Miners shall shower immediately after each exit.

(h)(1) Whenever feasible, the miner operator shall establish negative-pressure enclosures before beginning removal, demolition, or renovation operations.

(2) For small-scale, short-duration activities involving removal of asbestos-containing insulation on pipes, removal of entire and intact asbestos-Insulated pipes or structures, and replacement of electrical conduits through or near asbestos-containing material, glove bags and wet methods may be used instead of negative-pressure enclosures.

(i) Daily monitoring shall be conducted in the restricted area if the exposure exceeds the PEL or could reasonably be expected to exceed the PEL. When all workers within a restricted area are equipped with supplied-air respirators operated in the positive-pressure mode, daily monitoring is not required.

(j) Written decontamination, disposal and emergency procedures shall be developed and implemented for the restricted area and process.

(k) Prior to initial assignment and at least once every 12 months, persons required to enter the restricted areas or who are involved in decontamination, disposal, and emergency response shall receive training on the risks and hazards of asbestos and asbestos construction work, as well as the decontamination, disposal, and emergency procedures to be followed.

(l) The mine operator shall notify MSHA at least 20 days prior to beginning asbestos construction work involving—

(1) At least 80 linear meters (260 linear feet) of asbestos or material containing greater than 0.1 percent asbestos on pipes; or

(2) At least 15 square meters (160 square feet) of asbestos or material containing greater than 0.1 percent asbestos on other facility components.

(m) Containers of asbestos and materials containing greater than 0.1 percent asbestos shall be clearly marked and their contents identified. The containers shall be stored in a manner that prevents contamination of restricted or nonrestricted areas.

(n) The introduction or removal of any equipment, material, or other items to or from the restricted area shall be done in a manner that does not contaminate nonrestricted areas.

§ 72.450 Medical surveillance program.

(a) *Establishment.* The mine operator shall develop and implement a written medical surveillance program that shall make available medical examinations to miners who are working with or will be assigned to work with a chemical or process listed on Table C–5. The medical examination shall be provided at the operator's cost and at a reasonable time and place.

(b) *Medical examinations.* (1) Under the medical surveillance program, a medical examination by a licensed physician shall be made available to miners—

(i) Prior to initial assignment;

(ii) At least once every 12 months; and

(iii) At any time a miner is exposed to any carcinogen listed on Table C–5 as a result of an emergency.

(2) The operator shall provide the examining physician with the following information:

(i) The names of chemicals to be used.

(ii) Description of the work to be performed by the miner.

(iii) Duration and frequency of chemical usage.

(iv) Environmental conditions of the intended worksite.

(v) Type of personal protective equipment to be worn by the miner.

(vi) Relevant information from any previous medical examinations of the affected miner that is in the operator's possession.

(3) The mine operator shall require the physician to submit a written report of the miner's condition to the operator. The mine operator shall instruct the physician not to reveal orally, or in the written evaluation, any specific findings or diagnoses unrelated to the miner's exposure to carcinogens.

(4) The mine operator shall inform any miner who refuses to have the medical examination of the possible health consequences of such refusal and shall obtain a signed statement from the miner indicating that the miner understands the risk involved in the refusal to be examined.

(c) *Medical transfer.* (1) Upon notification from the physician that a miner's medical examination shows evidence that the miner has developed cancer or any material impairment of health or functional capacity due to occupational exposure to a carcinogen listed on Table C–5, the miner shall be given the option to work in an area of the mine where there is no exposure to the carcinogen. The operator shall notify the miner in writing of eligibility to exercise the option of medical transfer.

(2) When a miner requests to transfer, the mine operator shall notify the Administrator, Metal and Nonmetal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 15 calendar days from receipt by the operator of the miner's request for transfer. The operator's notice to the Administrator shall include the miner's name, occupation and assignment of new duties including the scheduled date of transfer.

(3) When a miner elects to transfer, the transfer shall take place on or before the 21st calendar day following receipt by the operator of the miner's request. The mine operator shall transfer the miner to an existing position at the same mine. If the miner agrees in writing, the operator may transfer the miner to a different mine.

(4) Any miner transferred under this section shall—

(i) Continue to receive compensation at no less than the regular rate of pay for a miner in the classification held by that miner immediately prior to the transfer.

(ii) Receive wage increases based upon the new work classification.

(d) *Recordkeeping.* (1) The mine operator shall maintain a record of the medical evaluation conducted for each miner. These records shall be kept for the duration of the miner's employment plus 30 years.

(2) Upon request, the operator shall give access to the miner's medical records required by this section to the miner or, with the miner's written consent, to the miner's designated representative. Access shall also be given to authorized representatives of

the Secretary of Labor and the Secretary of the Department of Health and Human Services. Upon termination of employment, miners shall be given a copy of their medical evaluation records. Copies of records shall be provided without cost.

(3) Whenever a mine operator is ceasing to do business, the operator shall transfer all records subject to this section to the successor operator. The successor operator shall receive and maintain these records for the period required by this section. Whenever an operator is ceasing to do business and there is no successor operator to receive and maintain the records, the operator shall notify all affected miners of their rights of access to records at least 3 months prior to disposal of the records.

TABLE C–5.—MEDICAL EVALUATION CARCINOGENS

Asbestos mining and milling
Asbestos construction work
2-Acetylaminofluorene
Acrylonitrile
4-Aminodiphenyl
Arsenic trioxide production
Benzene (except gasoline)
Benzidine
bis (Chloromethyl) ether
Chloromethyl methyl ether
3,3 Dichlorobenzidine
4-Dimethylaminoazobenzene
Ethylenimine
Ethylene oxide
Formaldehyde
α-Naphthylamine
β-Naphthylamine
4-Nitrodiphenyl
N-Nitrosodimethylamine
β-Propiolactone
Vermiculite mining and milling where asbestos is present in concentrations greater than 1 percent in the ore or concentrate
Vinyl Chloride

Subpart D—Respiratory Protection

§ 72.500 Respiratory protection program.

When respiratory protection is required by this part, written standard operating procedures shall be developed and implemented that include the requirements of this section.

(a) Only respirators approved under 30 CFR Part 11 shall be used. Respirators shall be maintained in approved condition.

(b) Respirators shall be selected according to the nature of the hazard, the criteria in Tables D–1, D–2 and D–3, the manufacturer's limitations on the respirator, and the characteristics of the work environment, which includes the exposure levels, the period of time the respiratory protection will be worn, and work activities of the employees.

(c) Respirators shall be inspected before each use and after cleaning, sanitizing, and maintenance. Emergency-use respirators shall be inspected monthly with a record kept of the last inspection.

(d) Respirator wearers shall be provided with a clean and sanitized respirator each day. Respirators shall be cleaned and sanitized prior to use by another person. Emergency-use respirators shall be cleaned and sanitized promptly after each use.

(e) Respirators shall be stored in a manner that protects them from damage or contamination. Respirators stored for emergency use shall be accessible to persons who may need to use them.

(f) For respirators with tight-fitting facepieces, a qualitative or quantitative respirator fit test that has been shown by scientific data to be capable of indicating the adequacy of the fit shall be conducted initially and at least once every 12 months thereafter. Respirators failing to provide a satisfactory fit shall not be used. For respirators fitted quantitatively, a minimum ratio of 100 must be obtained. The maximum assigned protection factor allowed for qualitatively-fitted respirators is 10, with the exception of disposable dust/mist respirators which is limited to 5. For respirators fitted quantitatively the assigned protection factor is one-tenth the measured ratio but no greater than the maximum assigned protection factor listed in Tables D–2 and D–3.

(g) A record of the latest fit test for each respirator wearer shall be kept for 1 year or until the next fit test. The record shall include the date the fit test was made, the respirator wearer's name, and the make, model, and size of the respirators tested for which a satisfactory fit was obtained. When quantitative fit testing is conducted, the protection factor assigned to each respirator wearer and tested respirator shall be included in the record.

(h) For respirators with tight-fitting facepieces, negative- and positive-pressure sealing tests or equivalent qualitative sealing tests shall be conducted prior to use. Respirators failing to provide a satisfactory seal shall not be used.

(i) Respirators shall not be used when facial hair comes between the sealing surface of the respirator facepiece and the face.

(j) Respirator wearers, supervisors, and persons issuing or maintaining respirators shall be trained initially and at least once every 12 months thereafter in the selection, use, and maintenance of respiratory devices. The mine operator and the person trained shall both certify that the training was conducted.

(k) When compressors or blowers are used to provide respirable air, they shall be constructed and located to prevent entry of contaminated air into the air supply system. Compressors shall be equipped with in-line air purifying sorbent beds or filters to ensure breathing air quality. Oil-lubricated compressors shall be equipped with a carbon monoxide or high-temperature alarm.

(l) When supplied air, compressed air, or oxygen is provided for respiration, it shall meet the requirements of 30 CFR part 11.

(m) Compressed oxygen shall not be used in atmosphere-supplying respirators or in open-circuit, self-contained breathing apparatus that have previously used compressed air.

TABLE D–1.—OXYGEN-DEFICIENT ATMOSPHERES

Altitude (ft.)	Oxygen-deficient atmospheres	Oxygen-deficient IDLH atmospheres
0–3,000	19.5	16
3,001–4,000	19.5	16.4
4,001–5,000	19.5	17.1
5,001–6,000	19.5	17.8
6,001–7,000	19.5	18.5
7,001–8,000	19.5	19.3
Above 8,000 ft. to 14,000 ft.		19.5

TABLE D–2.—AIR-PURIFYING RESPIRATORS [1]

	Assigned maximum protection factor
Half mask or quarter facepiece	10
Full facepiece	50
Disposable, dust/mist	5
Powered air-purifying:	
Tight-fitting full facepiece	250
Tight-fitting half mask [2]	50
Loose-fitting hood or helmet	25

[1] Air-purifying respirators may not be used in oxygen-deficient or IDLH atmospheres. Air-purifying respirators used for particulate protection against carcinogens shall be equipped with high-efficiency filters.

[2] Only full-facepiece respirators are to be used in contaminant concentrations that produce eye irritation.

TABLE D–3.—ATMOSPHERE-SUPPLYING RESPIRATORS

	Assigned maximum protection factor
Supplied-Air Respirator (SAR) [1]	
Negative pressure (demand):	
Half mask	10
Full facepiece	50

TABLE D–3.—ATMOSPHERE-SUPPLYING RESPIRATORS—Continued

	Assigned maximum protection factor
Continuous flow:	
Hood or helmet	25
Half mask	50
Full facepiece	250
Pressure demand:	
Half mask	1,000
Full facepiece	1,000
Combination full facepiece: Pressure demand SAR with auxiliary self-contained air supply	Greater than 1,000, and IDLH, or unknown concentrations.
Self-Contained Breathing Apparatus (SCBA) [2]	
Demand (except for apparatus approved for mine rescue)	50
Demand—approved for mine rescue	Greater than 1,000, and IDLH, or unknown concentrations.
Pressure demand	Greater than 1,000 and IDLH or unknown concentrations.

[1] Any atmosphere-supplying respirator may be used in an oxygen-deficient atmosphere where the oxygen content is below the level listed for an oxygen-deficient atmosphere but above the level listed for oxygen-deficient IDLH atmospheres in Table D–1.

[2] Only a full-facepiece pressure-demand SCBA, combination full-facepiece pressure-demand SAR with auxiliary self-contained air supply or SCBA approved for mine rescue may be used in unknown IDLH or oxygen-deficient IDLH atmospheres listed in Table D–1.

§ 72.550 Medical surveillance program.

(a) *Establishment.* The mine operator shall develop and implement a written medical surveillance program that shall require miners who are or will be assigned to work in an area requiring respiratory protection to receive a medical examination. The medical examination shall be provided at the operator's cost and at a reasonable time and place.

(b) *Medical examinations.* (1) Under the medical surveillance program, miners shall be examined by a licensed physician—

(i) Prior to initial assignment;

(ii) At least once during the period listed in Table D–4; and

(iii) At any time the miner experiences difficulty breathing while being fitted for, or while using, a respirator.

(2) The operator shall provide the examining physician with the following information:

(i) The type of respiratory protection to be used.

(ii) Description of the work effort required.

(iii) Duration and frequency of usage.

(iv) The type of work performed, including any special responsibilities that could affect the safety of other miners, such as firefighting or rescue efforts.

(v) Any special environmental conditions, such as heat or work in confined spaces.

(vi) Relevant additional requirements for protective clothing and equipment.

(vii) Anticipated exposure levels.

(3) The mine operator shall require the physician to submit a written report of the miner's condition to the operator. The mine operator shall instruct the physician not to reveal orally, or in the written evaluation, any specific findings or diagnoses unrelated to the miner's respirator use.

(c) *Medical transfer.* (1) Upon notification from the physician that a miner's medical examination shows evidence that the miner is unable to wear a respirator, the miner shall be transferred to work in an area of the mine where respiratory protection is not required.

(2) When a miner must be transferred under this section, the mine operator shall notify the Administrator, Metal and Nonmetal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 15 calendar days from receipt of the physician's evaluation, that a miner will be transferred. The operator's notice to the Administrator shall include the miner's name, occupation and assignment of new duties including the scheduled date of transfer.

(3) The miner's transfer shall be on or before the 21st calendar day following receipt of the physician's evaluation. The mine operator shall transfer the miner to an existing position at the same mine. If the miner agrees in writing, the operator may transfer the miner to a different mine.

(4) Any miner transferred under this section shall—

(i) Continue to receive compensation at no less than the regular rate of pay for a miner in the classification held by that miner immediately prior to the transfer.

(ii) Receive wage increases based upon the new work classification.

(d) *Recordkeeping.* (1) The mine operator shall maintain a record of the medical evaluation conducted for each miner. These records shall be kept by the operator for 5 years.

(2) Upon request, the operator shall give access to the miner's medical records required by this section to the miner or, with the miner's written consent, to the miner's designated representative. Access shall also be given to authorized representatives of the Secretary of Labor and the Secretary of the Department of Health and Human Services. Upon termination of employment, miners shall be given a copy of their medical evaluation records. Copies of records shall be provided without cost.

(3) Whenever a mine operator is ceasing to do business, the operator shall transfer all records subject to this section to the successor operator. The successor operator shall receive and maintain these records for the period required by this section. Whenever an operator is ceasing to do business and there is no successor operator to receive and maintain the records, the operator shall notify all affected miners of their rights of access to records at least 3 months prior to disposal of the records.

TABLE D–4.—FREQUENCY OF MEDICAL EXAMINATIONS FOR RESPIRATOR USE

	Worker age (years)		
	<35	35–45	>45
Most working conditions requiring respirators.	Every 5 years.	Every 2 years.	Annually.
Strenuous work conditions with SCBA.	Every 3 years.	Every 18 months.	Annually.

Subpart E—Miscellaneous

§ 72.600 Prohibited areas for food and beverages.

No one shall be allowed to consume or store food or beverages in a toilet room or in any area where the food or beverages could be contaminated by a hazardous substance.

§ 72.610 Abrasive blasting.

(a) *Surface areas.* When an abrasive blasting operation is performed and silica sand or other materials containing more than 1 percent quartz are used as an abrasive substance, all exposed miners shall use supplied-air respirators approved for abrasive blasting in accordance with § 72.500 or the operation shall be performed in a totally

enclosed device with the person outside the device.

(b) *Underground areas of underground mines.* Silica sand or other materials containing more than 1 percent quartz shall not be used as an abrasive substance in abrasive blasting.

§ 72.620 Drill dust control at surface mines and surface areas of underground mines.

Holes shall be collared and drilled wet, or other effective dust-control measures shall be used when drilling non-water-soluble material. Effective dust-control measures shall be used when drilling water-soluble materials.

§ 72.630 Drill dust control at underground areas of underground mines.

(a) Dust resulting from drilling in rock shall be controlled by use of permissible dust collectors, or by water, or water with a wetting agent, or by ventilation, or by any other method or device approved by the Secretary that is as effective in controlling the dust.

(b) *Dust collectors.* Dust collectors shall be maintained in permissible and operating condition. Dust collectors approved under Part 33—Dust Collectors for Use in Connection with Rock Drilling in Coal Mines of this title or under Bureau of Mines Schedule 25B are permissible dust collectors for the purpose of this section.

(c) *Water control.* Water used to control dust from drilling rock shall be applied through a hollow drill steel or stem or by the flooding of vertical drill holes in the floor.

(d) *Ventilation control.* To adequately control dust from drilling rock, the air current shall be so directed that the dust is readily dispersed and carried away from the drill operator or any other miners in the area.

Appendix A—Nonmandatory—Work Practices and Engineering Controls for Major Asbestos Removal, Renovation and Demolition Operations

This is a nonmandatory appendix designed to provide guidelines to assist employers in complying with the requirements of § 72.405. Specifically, this appendix describes the equipment, methods, and procedures that should be used in major asbestos-removal projects conducted to abate a recognized asbestos hazard or in preparation for building renovation or demolition. These projects require the construction of negative-pressure temporary enclosures to contain the asbestos material and to prevent the exposure of bystanders and other workers at the worksite. Paragraph (h) of § 72.405 of the standard requires that whenever feasible, the mine operator must establish negative-pressure enclosures before beginning asbestos removal, demolition, or renovation operations. The operator should also be aware that, when conducting asbestos-removal projects, enclosures may be required under the National Emissions Standards for Hazardous Air Pollutants (NESHAPS), 40 CFR part 61, subpart M, or EPA regulations under the Clean Water Act.

Construction of a negative-pressure enclosure is a simple but time-consuming process that requires careful preparation and execution; however, if the procedures below are followed, contractors should be assured of achieving a temporary barricade that will protect workers and others outside the enclosure from exposure to asbestos and minimize to the extent possible the exposure of asbestos workers inside the barrier as well.

The equipment and materials required to construct these barriers are readily available and easily installed and used. In addition to an enclosure around the removal site, the standard requires that workers leave their work clothes at the point of exit and shower immediately after each exit. A recommended facility is described below. The steps in the proces of preparing the asbestos-removal site, building the enclosures, constructing hygiene facilities, removing the asbestos-containing material, and restoring the site include:

(1) Planning the removal project;

(2) Procuring the necessary materials and equipment;

(3) Preparing the work area;

(4) Removing the asbestos-containing material;

(5) Cleaning the work area; and

(6) Disposing of the asbestos-containing waste.

Planning the Removal Project

The planning of an asbestos-removal project is critical to completing the project safely and cost-effectively. A written asbestos-removal plan should be prepared that describes the equipment and procedures that will be used throughout the project. The asbestos abatement plan will aid not only in executing the project but also in complying with the reporting requirements of the USEPA asbestos regulations (40 CFR Part 61, subpart M), which call for specific information such as a description of control methods and control equipment to be used and the disposal sites the contractor proposes to use to dispose of the asbestos-containing materials.

The asbestos abatement plan should contain the following information:

- A physical description of the work area;
- A description of the approximate amount of material to be removed;
- A schedule for turning off and sealing existing ventilation systems;
- Personnel hygiene procedures;
- Labeling procedures;
- A description of personal protective equipment and clothing to be worn by workers;
- A description of the local exhaust ventilation systems to be used;
- A description of work practices to be observed by workers;
- A description of the methods to be used to remove the asbestos-containing material;
- The wetting agent to be used;
- A description of the sealant to be used at the end of the project;
- An air-monitoring plan;
- A description of the method to be used to transport waste materials; and
- The location of the dump site.

Materials and Equipment Necessary for Asbestos Removal

Although individual asbestos-removal projects vary in terms of the equipment required to accomplish the removal of the material, some equipment and materials are common to most asbestos-removal operations. Equipment and materials that should be available at the beginning of each project are (1) rolls of polyethylene sheeting (2) rolls of gray duct tape or clear plastic tape; (3) HEPA-filtered vacuum(s); (4) HEPA-filtered portable ventilation systems; (5) a wetting agent; (6) an airless sprayer; (7) a portable shower unit; (8) appropriate respirators; (9) disposable coveralls; (10) signs and labels; (11) preprinted disposal bags; and (12) a manometer or pressure gauge.

Rolls of Polyethylene Plastic and Tape. Rolls of polyethylene plastic (6 mil in thickness) should be available to construct the asbestos-removal enclosure and to seal windows, doors, ventilation systems, wall penetrations, and ceilings and floors in the work area. Gray duct tape or clear plastic tape should be used to seal the edges of the plastic and to seal any holes in the plastic enclosure. Polyethylene plastic sheeting can be purchased in rolls up to 20 feet in width and up to 100 feet in length.

HEPA-Filtered Vacuum. A HEPA-filtered vacuum is essential for cleaning the work area after the asbestos has been removed. Such vacuums are designed to be used with a HEPA (High-Efficiency Particulate Air) filter, which is capable of removing 99.97 percent of the asbestos particles from the air. Various sizes and capacities of HEPA vacuums are available. All of these models are portable, and all have long hoses capable of reaching out-of-the-way places, such as areas above ceiling tiles and behind pipes.

Exhaust Air Filtration System. A portable ventilation system is necessary to create a negative pressure within the asbestos-removal enclosure. Such units are equipped with a HEPA filter and are designed to exhaust and clean the air inside the enclosure before exhausting it to the outside of the enclosure. The number and capacity of units required to ventilate an enclosure depend on the size of the area to be ventilated.

Wetting Agents. Wetting agents (surfactants) are added to water (which is then called amended water) and used to soak asbestos-containing materials; amended water penetrates more effectively than plain water and permits more thorough soaking of the asbestos-containing materials. Wetting the asbestos-containing material reduces the number of fibers that will break free and become airborne when the asbestos-containing material is handled or otherwise disturbed. Asbestos-containing materials should be thoroughly soaked before removal is attempted; the dislodged material should feel spongy to the touch. Wetting agents are generally prepared by mixing 1 to 3 ounces of wetting agent to 5 gallons of water.

One type of asbestos, amosite, is relatively resistant to soaking, either with plain or amended water. The work practices of choice when working with amosite-containing material are to soak in the material as much as possible and then to bag it for disposal immediately after removal, so that the material has no time to dry and be ground into smaller particles that are more likely to liberate airborne asbestos.

In a very limited number of situations, it may not be possible to wet the asbestos-containing material before removing it. Examples of such rare situations are: (1) Removal of asbestos material from a "live" electrical box that was over-sprayed with the material when the rest of the area was sprayed with asbestos-containing coating; and (2) removal of asbestos-containing insulation from a live steam pipe. In both of these situations, the preferred approach would be to turn off the electricity or steam, to permit wet-removal methods to be used. However, where removal work must be performed during working hours (that is, when normal operations cannot be disrupted), the asbestos-containing material must be removed dry. Immediate bagging is then the only method of minimizing the amount of airborne asbestos generated.

Airless Sprayer. Airless sprayers are used to apply amended water to asbestos-containing materials. Airless sprayers allow the amended water to be applied in a fine spray that minimizes the release of asbestos fibers by reducing the impact of the spray on the materials to be removed. Airless sprayers are inexpensive and readily available.

Portable Shower. Unless the site has available a permanent shower facility that is contiguous to the removal area, a portable shower system is necessary to permit workers to clean themselves after exposure to asbestos and to remove any asbestos contamination from their hair and bodies. Taking a shower prevents workers from leaving the work area with asbestos on their clothes and thus prevents the spread of asbestos contamination to areas outside the asbestos-removal area. This measure also protects members of the families of asbestos workers from possible exposure to asbestos. Showers should be supplied with warm water and a drain. A shower water filtration system to filter asbestos fibers from the shower water is recommended. Portable shower units are readily available, inexpensive, and easy to install and transport.

Respirator. Workers involved in asbestos-removal projects should be provided with appropriate NIOSH-approved respirators. Selection of the appropriate respirator should be based on the concentration of asbestos fibers in the work area. If the concentration of asbestos fibers is unknown, workers should be provided with respirators that will provide protection against the highest concentration of asbestos fibers that can reasonably be expected to exist in the work area. For most work within an enclosure, workers should wear half-mask dual-filter cartridge respirators. Disposable face mask respirators [single-use] should not be used to protect employers from exposure to asbestos fibers.

Disposable Coveralls. Workers involved in asbestos-removal operations should be provided with disposable impervious coverall that are equipped with head and foot covers. The coveralls has a zipper front and elastic wrists and ankles.

Signs and Labels. Before work begins, a supply of signs to demarcate the entrance to the work area should be obtained. The required labels are also commercially available as press-on labels and preprinted on the 6-milpolyethylene plastic bags used to dispose of asbestos-containing waste material.

Preparing the Work Area

Preparation for constructing negative-pressure enclosures should begin with the removal of all movable objects from the work area (for example, desks, chair, rugs, and light fixtures), to ensure that these objects do not become contaminated. When movable objects are contaminated or suspected of being contaminated, they should be vacuumed with a HEPA vacuum and cleaned with amended water, unless they are made of material that will be damaged by the wetting agent; wiping with plain water is recommended in those cases where amended water will damage the object. Before the asbestos-removal work begins, objects that cannot be removed from the work area should be covered with a 6-mil thick polyethylene plastic sheeting that is securely taped with duct tape or plastic tape to achieve an airtight seal around the object.

Constructing the Enclosure

When all objects have either been removed from the work area or covered with plastic, all penetrations of the floor, walls, and ceiling should be sealed with 6-mil polyethylene plastic and tape to prevent airborne asbestos from escaping into areas outside the work area or from lodging in cracks around the penetrations. Penetrations that require sealing are typically found around electrical conduits, telephone wires, and water-supply and drain pipes. A single entrance to be used for access and egress to the work area should be selected, and all other doors and windows should be sealed with tape or be covered with 6-mil polyethylene plastic sheeting and securely taped. Covering windows and unnecessary doors with a layer of polyethylene before covering the walls provides a second layer of protection and saves time in installation because it reduces the number of edges that must be cut and taped. All other surfaces such as support columns, ledges, pipes, and other surfaces should also be covered with polyethylene plastic sheeting and taped before the walls themselves are completely covered with sheeting.

Next a thin layer of spray adhesive should be sprayed along the top of all walls surrounding the enclosed work area, close to the wall-ceiling interface, and a layer of polyethylene plastic sheeting should be stuck to this adhesive and taped. The entire inside surfaces of all wall areas are covered in this manner, and the sheeting over the walls is extended across the floor area until it meets in the center of the area, where it is taped to form a single layer of material encasing the entire room except for the ceiling. A final layer of plastic sheeting is then laid across the plastic-covered floor area and up the walls to a level of 2 feet or so; this layer provides a second protective layer of plastic sheeting over the floor, which can then be removed and disposed of easily after the asbestos-containing material that has dropped to the floor has been bagged and removed.

Building Hygiene and Decontamination Facilities

The standard requires that personal protective equipment be left at the point of exit and the person shower immediately. In addition the movement of equipment, material, and other items to and from the restricted area must be done in a manner that does not contaminate the restricted or nonrestricted areas. This is usually accomplished by the construction of hygiene and decontamination facilities that consist of—

(1) A clean change room;
(2) A shower; and
(3) An equipment room.

The clean change room is an area in which workers remove their street clothes and don their respirators and disposable protective clothing. The clean room should have hooks on the wall or be equipped with lockers for the storage of workers' clothing and personal articles. Extra disposable coveralls and towels can also be stored in the clean change room.

The shower should be contiguous with both the clean and dirty change rooms and should be used by all workers leaving the work area. The shower should also be used to clean asbestos-contaminated equipment and materials, such as the outside of asbestos waste bags and hand tools used in the removal process.

The equipment room (also called the dirty change room) is the area where workers remove their protective coveralls and where equipment that is to be used in the work area can be stored. The equipment room should be lined with 6-mil thick polyethylene plastic sheeting in the same way as was done in the work-area enclosure. Two layers of 6-mil polyethylene plastic sheeting that are not taped together form a double flap or barrier between the equipment room and the work area and between the shower and the clean change room.

When feasible, the clean change room, shower, and equipment room should be contiguous and adjacent to the negative-pressure enclosure surrounding the removal area. In an overwhelming number of cases, hygiene facilities can be built contiguous to the negative-pressure enclosure. In some cases, however, hygiene facilities may have to be located on another floor of the building where removal of asbestos-containing materials is taking place. In these instances, the hygiene facilities can in effect be made to be contiguous to the work area by constructing a polyethylene plastic "tunnel" from the work area to the hygiene facilities. Such a tunnel can be made even in cases where the hygiene facilities are located several floors above or below the work area; the tunnel begins with a double-flap door at the enclosure, extends through the exit from

the floor, continues down the necessary number of flights of stairs and goes through a double-flap entrance to the hygiene facilities which have been prepared as described above. The tunnel is constructed of 2-inch by 4-inch lumber or aluminum struts and covered with 6-mil thick polyethylene plastic sheeting.

In the rare instances when there is not enough space to permit any hygiene facilities to be built at the work site, workers should be directed to change into a clean disposable worksuit immediately after exiting the enclosure (without removing their respirators) and to proceed immediately to the shower.

The clean room, shower, and equipment room must be sealed completely to ensure that the sole source of air flow through these areas originates from uncontaminated areas outside the asbestos-removal, demolition, or renovation enclosure. The shower must be drained properly after each use to ensure that contaminated water is not released to uncontaminated areas. If waste is inadvertently released, it should be cleaned up as soon as possible to prevent any asbestos in the water from drying and becoming airborne in areas outside the work area.

Establishing Negative Pressure Within the Enclosure

After construction of the enclosure is completed, ventilation systems should be installed to create a negative pressure within the enclosure with respect to the area outside the enclosure. Such ventilation systems must be equipped with HEPA filters to prevent the release of asbestos fibers to the environment outside the enclosure and should be operated 24 hours per day during the entire project until the final cleanup is completed and the results of final air samples are received from the laboratory. A sufficient amount of air should be exhausted to create a pressure of −0.02 inches of water within the enclosure with respect to the area outside the enclosure.

These ventilation systems should exhaust the HEPA-filtered clean air outside the building in which the asbestos removal, demolition, or renovation is taking place. If access to the outside is not available, the ventilation system can exhaust the HEPA-filtered asbestos-free air to an area within the building that is as far away as possible from the enclosure. Care should be taken to ensure that the clean air is released either to an asbestos-free area or in such a way as not to disturb any asbestos-containing materials.

A manometer or pressure gauge for measuring the negative pressure within the enclosure should be installed and should be monitored frequently throughout all work shifts during which asbestos removal, demolition, or renovation takes place. Several types of manometers and pressure gauges are available for this purpose.

All asbestos-removal, renovation, and demolition operations should have a program for monitoring the concentration of airborne asbestos and worker exposure to asbestos. Area samples should be collected inside the enclosure (approximately four samples for 5000 square feet of enclosure area). At least two samples should be collected outside the work area, one at the entrance to the clean change room and one at the exhaust of the portable ventilation system. In addition, several breathing-zone samples should be collected from those workers who can reasonably be expected to have the highest potential exposure to asbestos. Removing Asbestos Materials.

It is recommended that a competent person be designated to—

(1) Set up the enclosure;

(2) Ensure the integrity of the enclosure;

(3) Control entry to and exit from the enclosure;

(4) Supervise all exposure monitoring required;

(5) Ensure the use of personal protective clothing and equipment;

(6) Ensure that workers are trained in the use of engineering controls, work practices, and personal protective equipment;

(7) Ensure the use of hygiene facilities and the observance of proper decontamination procedures; and

(8) Ensure that engineering controls are functioning properly.

The competent person will generally be a Certified Industrial Hygienist, an industrial hygienist with training and experience in the handling of asbestos, or a person who has such training and experience as a result of on-the-job training and experience.

Ensuring the integrity of the enclosure is accomplished by inspecting the enclosure before asbestos-removal work begins and prior to each workshift throughout the entire period work is being conducted in the enclosure. The inspection should be conducted by locating all areas where air might escape from the enclosure; this is best accomplished by running a hand over all seams in the plastic enclosure to ensure that no seams are ripped and the tape is securely in place.

The competent person should also ensure tha unauthorized personnel do not enter the enclosure and that all workers who enter the enclosure use the hygiene facilities and observe the proper decontamination procedures (described below).

Proper work practices are necessary during asbestos removal, demolition, and renovation to ensure that the concentration of asbestos fibers inside the enclosure remains as low as possible. One of the most important work practices is to wet the asbestos-containing material before it is disturbed. After the asbestos-containing material is thoroughly wetted, it should be removed by scraping (as in the case of sprayed-on or troweled-on ceiling material) or removed by cutting the metal bands or wire mesh that support the asbestos-containing material on boilers or pipes. Any residues that remains on the surface of the object from which asbestos is being removed should be wire-brushed and wet-wiped.

Bagging asbestos waste material promptly after its removal is another work practice control that is effective in reducing the airborne concentration of asbestos within the enclosure. Whenever possible, the asbestos should be removed and placed directly into bags for disposal rather than dropping the material to the floor and picking up all of the material when removal is complete. If a significant amount of time elapses between the time that the material is removed and the time it is bagged, the asbestos material is likely to dry out and generate asbestos-laden dust when it is disturbed by people working within the enclosure. Any asbestos-contaminated supplies and equipment that cannot be contaminated should be disposed of in prelabeled bags; items in this category include plastic sheeting, disposable work clothing, respirator cartridges, and contaminated wash water.

A checklist is one of the most effective methods of ensuring adequate surveillance of the integrity of the asbestos-removal enclosure. Such a checklist is shown in Figure A–1. Filling out the checklist at the beginning of each shift in which asbestos removal is being performed will serve to document that all the necessary precautions will be taken during the asbestos-removal work. The checklist contains entries for ensuring that—

- The work area enclosure is complete;
- The negative-pressure system is in operation;
- Necessary signs and labels are used;
- Appropriate work practices are used;
- Necessary protective clothing and equipment are used; and
- Appropriate decontamination procedures are being followed.

Cleaning the Work Area

After all of the asbestos-containing material is removed and bagged, the entire work area should be cleaned until it is free of all visible asbestos dust. All surfaces from which asbestos has been removed should be cleaned by wire-brushing the surfaces, HEPA vacuuming these surfaces, and wiping them with amended water. The inside of the plastic enclosure should be vacuumed with a HEPA vacuum and wet-wiped until there is no visible dust in the enclosure. Particular attention should be given to small horizontal surfaces such as pipes, electrical conduits, lights, and support tracks for drop ceilings. All such surfaces should be free of visible dust before the final air samples are collected.

Additional sampling should be conducted inside the enclosure after the cleanup of the work area has been completed. Approximately four area samples should be collected for each 5,000 square feet of enclosure area. The enclosure should not be dismantled until the final samples show asbestos concentrations of less than 0.1 f/cc. EPA recommends that a clearance level of 0.01 f/cc be achieved before cleanup is considered complete.

A clearance checklist is an effective method of ensuring that all surfaces are adequately cleaned and the enclosure is ready to be dismantled. Figure A–2 shows a checklist that can be used during the final inspection phase of asbestos-abatement, removal, or renovation operations.

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Figure A-1 Checklist

Asbestos Removal, Renovation, and Demolition Checklist

Date: _____ Location: _____

Supervisor _____ Project # _____

Work Area (sq. ft.) _____

	Yes	No
I. Work site barrier		
Floor covered	___	___
Walls covered	___	___
Area ventilation off	___	___
All edges sealed	___	___
Penetration sealed	___	___
Entry curtains	___	___
II. Negative Air Pressure		
HEPA Vac ____ Ventilation system _____		
Constant Operation	___	___
Negative pressure achieved	___	___
III. Signs		
Work area entrance	___	___
Bags labeled	___	___
IV. Work Practices		
Removed material promptly bagged	___	___
Material worked wet	___	___
HEPA vacuum used	___	___
No smoking	___	___
No eating, drinking	___	___
Work area cleaned after completion	___	___
Personnel decontaminated each departure	___	___
V. Protective Equipment		
Disposable clothing use one time	___	___
Proper NIOSH-approved respirators	___	___
VI. Showers		
On site	___	___
Functioning	___	___
Soap and towels	___	___
Used by all personnel	___	___

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FIGURE A-2.—CLEARANCE CHECKLIST

Field Inspection or Asbestos Removal, Renovation, and Demolition Projects

Date: _____
Project: _____
Location: _____
Building: _____

CHECKLIST:

Residual dust on:	Yes	No
a. Floor	____	____
b. Horizontal surfaces	____	____
c. Pipes	____	____
d. Ventilation equipment	____	____
e. Ducts	____	____
f. Register	____	____
g. Lights	____	____

FIELD NOTES:
Record any problem encountered here.

FINAL AIR SAMPLE RESULTS:

Appendix B—Nonmandatory Medical Evaluation Procedures for Respirator Use

This appendix contains recommended elements that should be taken into account during the performance of the required medical evaluation for respirator use. These elements should be evaluated in taking the medical history and performing the medical examination. However, the specific nature of the medical evaluation and the extent of testing performed are left for the responsible physician to determine. This recommended list of elements to be considered is not meant to limit the physician to the testing procedures recommended. The examining physician is free to perform additional tests, if necessary, to determine a person's ability to wear a respirator.

(a) The medical history should include the following:

(1) Previously diagnosed diseases, particularly cardiovascular or respiratory diseases.

(2) Problems associated with breathing during normal work activities.

(3) Past problems with respirator use.

(4) Past and current usage of medication.

(5) Any known physical conditions that may interfere with respirator use.

(6) Previous occupations.

(7) Use of medications whose side effects might affect cardiopulmonary fitness.

(b) The medical examination should assess the following:

(1) Hearing ability. This should be sufficient to ensure communication and response to instructions and alarm systems.

(2) Pulmonary function testing including spirometry for FEV_1 and FVC. Presence and degree of restrictive or obstructive disease or perfusion disorders. In interpreting spirometry, if the FVC is less than 80 percent or the FEV_1 is less than 70 percent, restriction from respirator use should be considered.

(3) Cardiovascular system. Evidence of symptomatic coronary artery disease, significant arrhythmias, occurrence of frequent premature ventricular contraction (PVCs) with elevated pulse rates or uncontrolled hypertension symptoms.

(4) Endocrine system. Conditions that may result in sudden loss of consciousness or response capability.

(5) Neurological system. Inability to perform coordinated movements and conditions affecting response and consciousness.

(6) Psychological condition. Claustrophobia, severe anxiety.

(7) Miscellaneous conditions specific to the work situation. Skin conditions where occlusive materials may result in symptoms or aggravation of a preexisting dermatitis.

(8) Exercise stress. For these workers who use a self-contained breathing apparatus or rebreather-type respirator under strenuous work conditions, or in emergencies, particularly in fire and rescue operations.

Appendix C—Nonmandatory Fit Testing Protocols

I. Isoamyl Acetate Protocol

(a) *Odor threshold screening.* The odor threshold screening test, performed without wearing a respirator, is intended to determine if the individual tested can detect the odor of isoamyl acetate.

(1) Three 1 liter glass jars with metal lids are required.

(2) Odor-free water (for example, distilled or spring water) at approximately 25 degrees C shall be used for the solutions.

(3) The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor-free water in a 1 liter jar and shaking for 30 seconds. A new solution shall be prepared at least weekly.

(4) The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but shall not be connected to the same recirculating ventilation system.

(5) The odor-test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor-free water using a clean dropper or pipette. The solution shall be shaken for 30 seconds and allowed to stand for 2 to 3 minutes so that the IAA concentration above the liquid may reach equilibrium. This solution shall be used for only 1 day.

(6) A test blank shall be prepared in a third jar by adding 500 cc of odor-free water.

(7) The odor test and test blank jars shall be labeled 1 and 2 for jar identification. Labels shall be placed on the lids so they can be periodically peeled, dried off and switched to maintain the integrity of the test.

(8) The following instruction shall be typed on a card and placed on the table in front of the two test jars (that is, 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

(9) The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

(10) If the test subject is unable to correctly identify the jar containing the odor-test solution, the IAA qualitative fit test shall not be performed.

(11) If the test subject correctly identifies the jar containing the odor-test solution, the test subject may proceed to respirator selection and fit testing.

(b) *Isoamyl acetate fit test.* (1) The fit-test chamber shall be similar to a clear 55-gallon drum liner suspended inverted over a 2-foot diameter frame so that the top of the chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

(2) Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

(3) After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit-testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

(4) A copy of the test exercises and any prepared text from which the subject is to read shall be taped to the inside of the test chamber. The tests shall include the following:

(i) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.

(ii) Deep breathing. In a normal standing position, the subject shall breathe slowly and deeply, taking caution against hyperventilation.

(iii) Turning head side to side. Standing in place, the subject shall slowly turn the head from side to side between the extreme positions of each side. The head shall be held at each extreme momentarily so that the subject can inhale at each side.

(iv) Moving head up and down. Standing in place, the subject shall slowly move the head up and down. The subject shall be instructed to inhale in the up position (that is, when looking toward the ceiling).

(v) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(vi) Grimace. The test subject shall grimace by smiling or frowning.

(vii) Bending over. The test subject shall bend at the waist as if to touch the toes. Jogging in place shall be substituted for this exercise in those tests environments such as shroud-type QLFT units that prohibit bending at the waist.

(5) Upon entering the test chamber, the test subject shall be given a 6-inch by 5-inch piece of paper towel, or other porous, absorbent, single-ply material, folded in half and wetted with 0.75 cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

(6) Allow 2 minutes for the IAA test concentration to stabilize before starting the fit-test exercises. This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of cooperation, and the purpose for the head exercises; or to demonstrate some of the exercises.

(7) If at any time during the test, the subject detects the banana-like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

(8) If the test has failed, the subject shall return to the selection room and remove the respirator, repeat the odor-sensitivity test, select and put on another respirator, return to the test chamber and again begin the procedure described in (4) (i) through (vii) above. The process continues until a respirator that fits well has been found. Should the odor-sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

(9) When a respirator is found that passes the test, its efficiency shall be demonstrated for the subject by having the subject break the face seal and take a breath before exiting the chamber.

(10) When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the test area from becoming contaminated, the used towels shall be kept in a self-sealing bag so there is no significant IAA concentration build-up in the test chamber during subsequent tests.

II. Saccharin Solution Aerosol Protocol

The saccharin solution aerosol QLFT protocol is the only currently available, validated test protocol for use with particulate disposable dust respirators not equipped with high-efficiency filters. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(a) *Taste threshold screening.* The saccharin taste threshold screening, performed without wearing a respirator, is intended to determine whether the individual being tested can detect the taste of saccharin.

(1) During threshold screening as well as during fit testing, subjects shall wear an enclosure about the head and shoulders that is approximately 12 inches in diameter by 14 inches tall with at least the front portion clear and that allows free movements of the head when a respirator is worn. An enclosure substantially similar to the 3M hood assembly, parts # FT 14 and # FT 15 combined, is adequate.

(2) The test enclosure shall have a ¾-inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

(3) The test subject shall don the test enclosure. Throughout the threshold screening test, the test subject shall breathe with the mouth wide open and the tongue extended.

(4) Using a DeVilbiss Model 40 Inhalation Medication Nebulizer the test conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit-test-solution nebulizer.

(5) The threshold check solution consists of 0.83 grams of sodium saccharin USP in 1 cc of warm water. It can be prepared by putting 1 cc of the fit-test solution (see (b)(5) below) in 100 cc of distilled water.

(6) To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then released and allowed to fully expand.

(7) Ten squeezes are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

(8) If the first response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(9) If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(10) The test conductor will take note of the number of squeezes required to solicit a taste response.

(11) If the saccharin is not tasted after 30 squeezes (step 10), the test subject may not perform the saccharin fit test.

(12) If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

(13) Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in a the nebulizer body.

(14) The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every four hours.

(b) *Saccharin solution aerosol fit test procedure.* (1) The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

(2) The fit test uses the same enclosure described in (a) above.

(3) The test subject shall don the enclosure while wearing the respirator selected. Respirators shall be properly adjusted and equipped with particulate filters.

(4) A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit-test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

(5) The fit-test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

(6) As before, the test subject shall breathe through the wide open mouth with tongue extended.

(7) The nebulizer is inserted into the hole in the front of the enclosure and the fit-test solution is sprayed into the enclosure using the same number of squeezes required to elicit a taste response in the screening test.

(8) After generating the aerosol, the test subject shall be instructed to perform the following:

(i) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.

(ii) Deep breathing. In a normal standing position, the subject shall breathe slowly and deeply, taking caution against hyperventilation.

(iii) Turning head side to side. Standing in place, the subject shall slowly turn the head from side to side between the extreme positions of each side. The head shall be held at each extreme momentarily so that subject can inhale at each side.

(iv) Moving head up and down. Standing in place, the subject shall slowly move the head up and down. The subject shall be instructed to inhale in the up position (that is, when looking toward the ceiling).

(v) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(vi) Grimace. The test subject shall grimace by smiling or frowning.

(vii) Bending over. The test subject shall bend at the waist as if to touch the toes. Jogging in place shall be substituted for this exercise in those tests environments such as shroud-type QLFT units that prohibit bending at the waist.

(9) Every 30 seconds the aerosol concentration shall be replenished using one-half the number of squeezes as initially.

(10) The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

(11) If the taste of saccharin is detected, the fit is deemed unsatisfactory and a different respirator shall be tried.

III. Irritant Fume Protocol

(a) *Screening procedures.* (1) The respirator to be tested shall be equipped with high-efficiency particulate air (HEPA) filters.

(2) The test subject shall be allowed to smell a weak concentration of the irritant smoke before the respirator is donned to become familiar with its characteristic odor and to determine if the individual is responsive to the smoke.

(b) *Irritant fume fit-test procedures.* (1) Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part No. 5445, or equivalent. Attach one end of the smoke tube to a low-flow air pump set to deliver 200 milliliters per minute.

(2) Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep the eyes closed while the test is performed.

(3) The test conductor shall direct the stream of irritant smoke from the smoke tube towards the face seal area of the test subject. The test conductor shall begin at least 12 inches from the facepiece and gradually move to within 1 inch, moving around the whole perimeter of the mask. Alternatively, the test may be conducted in a tent as described in the isoamyl fit-test protocol. The irritant smoke should be introduced through a small hole in the tent until a light, visible concentration of irritant smoke is observed.

Throughout the test, additional smoke should be introduced to maintain the concentration.

(4) The following exercises shall be performed by the test subject while the respirator seal is being challenged by the smoke:

(i) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.

(ii) Deep breathing. In a normal standing position, the subject shall breathe slowly and deeply, taking caution against hyperventilation.

(iii) Turning head side to side. Standing in place, the subject shall slowly turn the head from side to side between the extreme positions of each side. The head shall be held at each extreme momentarily so that subject can inhale at each side.

(iv) Moving head up and down. Standing in place, the subject shall slowly move the head up and down. The subject shall be instructed to inhale in the up position (that is, when looking toward the ceiling).

(v) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(vi) Grimace. The test subject shall grimace by smiling or frowning.

(vii) Bending over. The test subject shall bend at the waist as if to touch the toes. Jogging in place shall be substituted for this exercise in those test environments such as shroud-type QLFT units that prohibit bending at the waist.

(5) Each test subject passing the smoke test without evidence of a response shall be given a sensitivity check of the smoke from the same tube once the respirator has been removed to determine whether the person reacts to the smoke. Failure to evoke a response shall void the fit test.

(6) The fit test shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agent.

PART 75—[AMENDED]

G. It is proposed to amend 30 CFR part 75 as follows:

1. The authority citation for part 75 is revised to read as follows:

Authority: 30 U.S.C. 801–961.

§ 75.301–2 [Amended]

2. Section 75.301–2 is removed.

PART 90—[AMENDED]

H. It is proposed to amend 30 CFR part 90 as follows:

1. The authority citation for part 90 is revised to read as follows:

Authority: 30 U.S.C. 811 and 813(g).

2. A new § 90.302 is added to subpart D to read as follows:

§ 90.302 Respiratory protection; respirable dust.

Respiratory equipment approved for protection against respirable dust under 30 CFR part 11 shall be provided to and properly worn by all persons exposed to concentrations of respirable dust in excess of the levels required to be maintained under this part 90. Use of respirators shall not be substituted for environmental control measures in active workings. Use of respirators under this section shall be in accordance with Subpart D—Respiratory Protection of part 72 of this chapter.

[FR Doc. 89–19642 Filed 8–21–89; 8:45 am]
BILLING CODE 4510–43–M

federal register

Tuesday
August 29, 1989

Part III

Department of the Interior

National Park Service

National Register of Historic Places; Annual Update of Properties Removed and Determined Eligible

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places Annual Update of Properties Removed and Determined Eligible

The National Register of Historic Places is the official list of the Nation's cultural resources worthy of preservation. Properties listed in the National Register include districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, engineering, and culture. Authorized under the National Historic Preservation Act of 1966, as amended (80 Stat. 915, 16 U.S.C. 470 et seq.), the National Register is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect our historic and archeological resources. The National Register is administered by the National Park Service under the Secretary of the Interior.

It is the purpose of this notice, through publication of the information included herein, to apprise the public, as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties removed from the National Register and determined eligible for the National Register between October 1, 1987 and September 30, 1988.

A cumulative list of the more than 50,000 properties listed in the National Register is available through the American Association of State and Local History, 172 Second Avenue North, Nashville, TN 37201.

For more information contact the National Register at (202) 343–5726 or write to the National Register Reference Desk at the following address: US Department of the Interior, National Park Service, Interagency Resources Division, National Register of Historic Places, P.O. Box 37127, Washington, DC 20013–7127.

James M. Ridenour,

Director, National Park Service.

Dated: July 26, 1989.

Listed properties removed from the National Register.

ALASKA

Anchorage Borough-Census Area

Lathrop Building, 801 W. 4th Ave., Anchorage, 10/19/87, 84000629

ARIZONA

Maricopa County

Arizona Orange Association Packing House (Phoenix Commercial MRA), 520 W. Jackson, Phoenix, 4/08/88, 85002045

Coca Cola Bottling Works (Phoenix Commercial MRA), 547 W. Jefferson, Phoenix, 4/08/88, 85002053

Ellingson Building (Phoenix Commercial MRA), 19 E. Washington, Phoenix, 4/08/88, 85002055

Kloss, Rev. Daniel, House (Tempe MRA), 202 E. 6th St., Tempe, 4/08/88, 84000723

Ollerton House (Tempe MRA), 1004 S. Mill Ave., Tempe, 4/13/88, 84000735

Openshaw, Samuel, House (Tempe MRA), 104 W. 6th St., Tempe, 4/08/88 84000737

Winters Building-Craig Building (Phoenix Commercial MRA), 39 W. Adams, Phoenix, 4/08/88, 85002080

COLORADO

Rio Blanco County

Whiskey Creek Trestle, W of Rangely, Rangely vicinity, 11/25/87, 80000925

FLORIDA

Escambia County

BUCCANEER (schooner), Municipal Wharf, Pensacola, 2/17/88, 72000313

INDIANA

Monroe County

Princess Theatre Building (Boundary Decrease), 206 N. Walnut St., Bloomington, 11/13/87, 87000999

Vanderburgh County

Walnut Street School (Downtown Evansville MRA), Walnut and 9th Sts., Evansville, 11/13/87, 82000127

KENTUCKY

Boyd County

Poage, Edward, House (Ashland MRA), 1016 Winchester Ave., Ashland, 2/03/88, 79003554

Valdenar-Wheeler House (Ashland MRA), 2417 Winchester Ave., Ashland, 2/03/88, 79003563

Floyd County

Garfield Place, 2nd Ave., Prestonsburg, 2/03/88, 74000871

Henderson County

Douglass High School, 300 S. Alvasia St., Henderson, 2/03/88, 80001548

Hopkins County

Hamby Well Building, 120 S. Main St., Dawson Springs, 2/03/88, 72000534

Kenton County

Champion Ice Manufacturing and Cold Storage Company, 40 E. 2nd St., Covington, 2/03/88, 79001016

MICHIGAN

Calhoun County

Battle Creek Sanatarium, 197 N. Washington Ave., Battle Creek, 4/18/88, 78001492

Houghton County

Italian Hall, 7th and Elm Sts., Calumet, 4/18/88, 80001858

Wayne County

Woodward Ave. Baptist Church (Religious Structures of Woodward Ave. TR), 1464 Woodward Ave., Detroit, 4/18/88, 82002915

MINNESOTA

Blue Earth County

Jefferson, Adam, House (Blue Earth County MRA), Cleveland St., Mankato, 11/30/87, 80001948

Schmidt, Oscar, House (Blue Earth County MRA), 111 Park Ln., Mankato, 9/19/88, 80001955

Hennepin County

New Century Mill (Boundary Decrease), Oak and Fifth Sts., Minneapolis, 3/07/88, 88000457

Meeker County

West End Elevator, 4th St. and Atlantic Ave., Dassel, 11/30/87, 85000556

Olmsted County

Chicago Great Western Railroad Company Depot, 88 S. Park Ave. and 130 S. Park Ave., Rochester, 11/13/87, 80004267

Hotel Zumbro, 101 1st Ave., SW, Rochester, 3/28/88, 80002100

Otter Tail County

Page, Henry G., House, 219 N. Whitford St., Fergus Falls, 11/13/87, 75001004

Ramsey County

Smith Avenue High Bridge, Smith Ave., St. Paul, 3/28/88, 81000323

Steele County

Steele County Courthouse, 111 E. Main St., Owatonna, 11/30/87, 76001076

MISSISSIPPI

Claiborne County

Sacred Heart Roman Catholic Church, Grand Gulf Military Monument Park, Port Gibson vicinity, 11/23/87, 73002241

Jones County

Pinehurst Hotel, 318 5th Ave., Laurel, 10/01/87, 84002234

Lauderdale County

Dixie Gas Station (Meridian MRA), 2902 5th St., Meridian, 10/01/87, 79003389

Meyer-Loeb Building (Meridian MRA), 2100 4th St., Meridian, 10/01/87, 79003398

Marshall County

Malone House (Holly Springs MRA), 197 W. College Ave., Holly Springs, 5/25/88, 82003109

NEW YORK

Erie County

17–21 Emerson Place Row (Masten Neighborhood Rows TR), 17–21 Emerson Pl., Buffalo, 5/20/88, 86000689

NORTH CAROLINA

Mecklenburg County

Carolina Theater, 224–232 N. Tryon St., Charlotte, 8/22/88, 88001637
Trotter, Thomas, Building, 108 S. Tryon St., Charlotte, 2/01/88, 85001129

OREGON

Deschutes County

Shelvin-Hixon Mill Buildings, Riverside Blvd., Bend, 10/13/87, 78002284

Jackson County

Antelope Creek Bridge (Oregon Covered Bridges TR), NE of Medford, Medford vicinity, 4/18/88, 79002071

Lane County

Horse Creek Bridge (Oregon Covered Bridges TR), S of McKenzie Bridge, McKenzie Bridge vicinity, 6/27/88, 79002098

PENNSYLVANIA

Westmoreland County

Greene, Gen., Hotel, 24 W. Otterman St., Greensburg, 6/16/88, 88003646

SOUTH CAROLINA

Chester County

Chester Historic District (Boundary Decrease), Roughly along S side of Saluda St. and S of Gadsden St., Chester, 3/15/88, 88000456

SOUTH DAKOTA

Brookings County

Farmers Store, Main St., Bushnell, 2/23/88, 79002393

Minnehaha County

Blackstone Court Apartments, 303 W. 12th St., Sioux Falls, 1/12/88, 82003932

Turner County

I.O.O.F. Hall, Hurley Lodge No. 75, Center Ave., Hurley, 1/12/88, 82003944

TENNESSEE

Bedford County

Webb School, Junior Room, Off TN 82, Bell Buckle, 10/20/87, 73001751

Grundy County

Miner's Hall (Grundy County MRA), Jasper Rd., Tracy City, 5/23/88, 87000535

Hamilton County

News-Pound Building (Hunt, Reuben H., Buildings in Hamilton County TR), E. 11th St., Chattanooga, 5/23/88, 80003819

Loudon County

Carmichael Inn, Off U.S. 11, Loudon vicinity, 11/25/87, 70000612

TEXAS

Bexar County

Sullivan, Daniel J., Stable and Carriage House, 314 Fourth St., San Antonio, 3/18/88, 78002895

Fayette County

Buckner's Creek Bridge, 10 mi. N of Flatonia over Buckner's Creek, Flatonia vicinity, 4/21/88, 75002025

UTAH

Salt Lake County

Ferry Hall-Westminster College, 1840 S. 1300 East, Salt Lake City, 3/08/88, 83003951

Sevier County

Richfield Tithing Office (Tithing Offices and Granaries of the Mormon Church TR), 190 W. Center, Richfield, 3/08/88, 85000284

WASHINGTON

Grays Harbor County

Chow Chow Bridge (Historic Bridges/Tunnels in Washington State TR), Spans Quinault River, Taholah, 4/25/88, 82004218

King County

Enumclaw High School, 2222 Porter St., Enumclaw, 1/20/88, 84003488

Spokane County

Hyde Building and Annex, 611½ Riverside Ave., Spokane, 1/20/88, 78002776

WEST VIRGINIA

Wood County

Robb Apartments (Downtown Parkersburg MRA), 201 8th St., Parkersburg, 12/22/87, 82001783
West Central WV Community Action Assoc., Inc. (Downtown Parkersburg MRA), 804 Ann St., Parkersburg, 2/19/88, 82001794

Properties Determined Eligible for the National Register

The following properties were determined to be eligible in fiscal year 1988 for inclusion in the National Register of Historic Places. Most determinations of eligibility are made at the request of the concerned federal agency under the authority in section 2(b) and 1(3) of Executive Order 11593, and the National Historic Preservation Act of 1966, as amended, and on nominations for privately owned properties when the owner, or in the case of properties with multiple owners, a majority of owners, object to listing.

Historic properties that are determined to be eligible for inclusion in the National Register of Historic Places are entitled to protection pursuant to section 106 of the National Historic Preservation Act of 1966, as amended, and the procedures of the Advisory Council on Historic Preservation, 36 CFR Part 800. Before an agency of the federal government may undertake any project that may have an affect on such an eligible property, the Advisory Council on Historic Preservation will be given an opportunity to comment on the proposal.

Properties determined eligible for the National Register because of owner objections.

ALABAMA

Montgomery County

Swan, Samuel, House, 407 Adams Ave., Montgomery, 6/30/88, 88001342

CONNECTICUT

Hartford County

Barber, Martin, House (18th and 19th Century Brick Architecture of Windsor TR), 992 Windsor Ave., Windsor, 9/15/88, 88001472
Barber, Warren M., House (18th and 19th Century Brick Architecture of Windsor TR), 860 Windsor Ave., Windsor, 9/15/88, 88001473
Belden, Horace, House, 21 West St., Simsbury, 1/06/88, 88000096

Fairfield County

First Congregational Church (Downtown Stamford Ecclesiastical Complexes TR), Walton Pl., Stamford, 4/04/88, 88000543

Hartford County

House at 88 Maple Avenue (18th and 19th Century Brick Architecture of Windsor TR), 88 Maple Ave., Windsor, 9/15/88, 88001475

New London County

McCourt Site (Lower Connecticut River Valley Woodland Period Archaeological TR), Address Restricted, Lyme vicinity, 10/15/87, 87001953

Fairfield County

St. Basil's Preparatory School and Bishop's Residence (Downtown Stamford Ecclesiastical Complexes TR), 39 Clovelly Rd., Stamford, 12/24/87, 87002603
St. John's Roman Catholic Church (Downtown Stamford Ecclesiastical Complexes TR), 279 Atlantic St., Stamford, 12/24/87, 87002589

Hartford County

Wilson, Henry, Jr., House (18th and 19th Century Brick Architecture of Windsor TR), 253 Windsor Ave., Windsor, 9/15/88, 88001474

DELAWARE

New Castle County

Boulden, George, Farm, 2859 Frazer Rd., Newark vicinity, 1/25/88, 88000547

ILLINOIS

Iroquois County

Watseka Union Depot, W. Cherry St., Watseka, 6/16/88, 88003467

KENTUCKY

Greenup County

Greenup Christian Church (Greenup MRA), 611 Main St., Greenup, 1/27/88, 88000546

MARYLAND

Montgomery County

Silver Theatre and Shopping Center, 8533–8575 Georgia Ave, 8617–8623 Colesville Rd., and 951 Ellsworth Dr., Silver Spring, 6/30/88, 88003466

MASSACHUSETTS

Essex County

Merrimac Hat Company Mills, Merrimac St. at Bailey Pond, Amesbury, 10/30/87, 87002066

Barnstable County

Scudder, Josiah, Jr., House (Barnstable MRA), 886 Main St., Osterville, 11/10/87, 87002259

Swift, E. E. C., Store (Barnstable MRA), 699 Main St., Osterville, 10/08/87, 87001971

Suffolk County

Wesleyan Association Building, 32–38 Bromfield St., Boston, 4/01/88, 88000542

MISSISSIPPI

Monroe County

Coopwood, Capt. Thomas, House (Aberdeen MRA), 205 Thayer Ave., Aberdeen, 2/19/88, 88000492

Carroll County

Pine Bluff (22CR503), Address Restricted, Cruger vicinity, 7/11/88, 88001452

Monroe County

Pollard, Austin, House (Aberdeen MRA), 1000 Whitfield St., Aberdeen, 2/19/88, 88000494

MONTANA

Dawson County

Northern Pacific Underpass (Glendive MRA), Between S. Merrill and Anderson Ave., Billings, 2/03/88, 88000540

Lewis and Clark County

Saints Cyril and Methodius Church, 120 W. Riggs, East Helena, 4/14/88, 88000541

Ravalli County

Wanderer, Lawrence W., House (Hamilton MRA), 111 S. Sixth, Hamilton, 8/26/88, 88001286

NEVADA

Clark County

Hanson Hall (Properties Associated with the San Pedro, Los Angeles, and Salt Lake Railroad TR), 700 Dividend Dr., Las Vegas, 10/02/87, 87001890

Ice Plant (Properties Associated with the San Pedro, Los Angeles, and Salt Lake Railroad TR), 612 S. Main St., Las Vegas, 10/02/87, 87001891

Lincoln Hotel (Properties Associated with the San Pedro, Los Angeles, and Salt Lake Railroad TR), 307 S. Main St., Las Vegas, 10/02/87, 87001892

NEW JERSEY

Essex County

Immaculate Conception Church (Montclair MRA), N. Fullerton and Munn Sts., Montclair, 7/22/88, 86003043

Tiffany & Company Stationers and Silver and Gold Smiths, 792–820 Highland Ave., Newark, 12/09/87, 87002261

NEW MEXICO

McKinley County

Atchison, Topeka and Santa Fe Railway Depot (Downtown Gallup MRA), 201 E. Sixty-sixth Ave., Gallup, 8/08/88, 88001694

Grant County

Bloodgood, Clyde A., House (Mimbres Valley MRA), Noonday Canyon Rd., San Lorenzo vicinity, 5/16/88, 88000988

McGregor, Elizabeth and Alex, House (Mimbres Valley MRA), E of NM 61, San Lorenzo vicinity, 8/05/88, 88001696

NEW YORK

Nassau County

House at 162 Sixteeth Ave. (Sea Cliff Summer Resort TR), 162 Sixteenth Ave., Sea Cliff, 2/18/88, 88000497

Queens County

New York Architectural Terra Cotta Company Office Building, 42–10 Vernon Blvd., New York, 2/17/88, 88000539

Kings County

Thomson Meter Company Building, 100–110 Bridge St., Brooklyn, 6/22/88, 88001231

NORTH CAROLINA

Granville County

Paschall—Daniel House (Granville County MPS), Address Restricted, Oxford vicinity, 8/31/88, 88001263

OHIO

Franklin County

Beggs Building, 21 E. State St., Columbus, 2/22/88, 88000495

Mahoning County

Sebring, Frank, House, 385 W. Ohio Ave., Sebring, 1/22/88, 88000545

Cuyahoga County

St. John Cantius Church Complex, 2270–2290 Professor Ave., Cleveland, 9/21/88, 88001709

OKLAHOMA

Sequoyah County

Falling Cat Site (348081), Address Restricted, Short vicinity, 8/15/88, 88001240

Le Flore County

Old Bokoshe School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935–1943 TR), NE of Bokoshe, Bokoshe vicinity, 9/08/88, 88001401

Pittsburg County

Scipio School (WPA Public Bldgs., Recreational Facilities and Cemetery Improvements in Southeastern Oklahoma, 1935—1943 TR), NW of McAlester, McAlester vicinity, 9/08/88, 88001416

Sequoyah County

Soybean East A Site (34SQ92), Address Restricted, Short vicinity, 8/16/88, 88001239

Waters, Bob, No. 1 Site (34SQ74), Address Restricted, Short vicinity, 8/16/88, 88001241

PENNSYLVANIA

Allegheny County

Hamilton School, Library Rd. near Hamilton Rd., Castle Shannon, 7/22/88, 88001450

PUERTO RICO

Mayaguez Municipality

Morales, Pardo, House, Calle Post No. 58, Mayaguez, 10/21/87, 87001998

Ponce Municipality

Riera—Toro House, Calle Marina No. 25, Ponce, 10/28/87, 87002067

TENNESSEE

Williamson County

David, James B., House (Williamson County MRA), Del Rio Pike, Franklin vicinity, 4/13/88, 88000589

Moore, Thomas, House (Williamson County MRA), Del Rio Pike, Franklin vicinity, 4/13/88, 88000588

Sayers, James J., House (Williamson County MRA), Splitlog Rd., Franklin vicinity, 4/13/88, 88000590

TEXAS

Collin County

House at 402 Wilcox (McKinney MPS), 402 Wilcox, McKinney, 1/29/88, 88000544

House at 408 Wilcox (McKinney MPS), 408 Wilcox, McKinney, 10/08/87, 87001972

UTAH

Weber County

Elmhurst Apartments (Three-Story Apartment Buildings in Ogden, 1908—1928 MPS), 2432 Van Buren Ave., Ogden, 12/31/87, 87002541

VIRGINIA

Richmond Independent City

Chesterman Place, 100 W. Franklin St., Richmond (Independent City), 10/27/87, 87001857

WASHINGTON

Thurston County

Ewald House (Thurston County MRA), 5829 Gull Harbor Dr. NE, Olympia vicinity, 6/23/88, 88003470

Rutledge, George Washington, House (Thurston County MRA), 13425 Littlerock Rd., Littlerock vicinity, 6/23/88, 88003469

Rutledge, Thomas, House and Barn (Thurston County MRA), 13425 Littlerock Rd. SW, Littlerock vicinity, 6/23/88, 88003468

WISCONSIN

Waukesha County

Chandler—Blair House, 1942 Madison St., Waukesha, 12/22/87, 87002542

Dane County

East Mifflin Street Historic District, 14—24 E. Mifflin St., Madison, 10/08/87, 87002260

Milwaukee County

Excelsior Masonic Temple, 2422 W. National Ave., Milwaukee, 2/25/88, 88000548

Waukesha County

Lepper, M.F., House (Menomonee Falls MRA), N88 W16596 Main St., Menomonee Falls, 9/21/88, 88001677

La Crosse County

Samuel's Cave, Address Restricted, Barre Mills vicinity, 1/06/88, 86003275

Waukesha County

St. Anthony's Catholic Church and Cemetery (Menomonee Falls MRA), N74 W13604 Appleton Ave., Menomonee Falls, 9/21/88, 88001675

St. James Catholic Church and Cemetery (Menomonee Falls MRA), W220 N6588 Town Line Rd., Menomonee Falls, 9/21/88, 88001683

St. Mary's Catholic Church (Menomonee Falls MRA), N89 W16297 Cleveland Ave., Menomonee Falls, 9/21/88, 88001680

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ARIZONA

Maricopa County

Stroud Building, 31—35 N. Central Ave., Phoenix, 2/10/88

CALIFORNIA

Alameda County

California Emigrant Trail, Off US 95, 20 mi. N of Fallon, Fallon vicinity, 9/16/88

San Diego County

US Naval Hospital, Balboa Park (Buildings 6, 11, 13 & 17), US Naval Hospital, Balboa Park, San Diego, 12/04/87

COLORADO

Boulder County

Howard Ditch (5 BL 1986), Address Restricted, Boulder vicinity, 12/18/87

HAWAII

Maui County

Kamoi Movie Theater, NE corner Ala Malama and Kamoi Sts., Kaunakakai, 2/19/88

IDAHO

Blaine County

Wood River Supply Building, 1st St. between Bullion and Croy Sts., Hailey, 6/24/88

Payette County

Payette Main Post Office, 915 Center Ave., Payette, 2/03/88

ILLINOIS

Cook County

Old Chicago Station, Between the Chicago River Turning Basin and the Monroe St. Harbor, Chicago, 3/30/88

INDIANA

Shelby County

House at 221 West Main Street, 221 W. Main St., Morristown, 1/27/88

MARYLAND

Anne Arundel County

Baltimore-Washington Parkway, MD 295 from US 50 to I–695, Greenbelt vicinity, 9/23/88

Smith Farm, 900 Smith Rd., Severn, 1/20/88

MICHIGAN

Wayne County

Building at 1551 Hart Street, 1551 Hart St., Detroit, 11/06/87

MISSISSIPPI

Bolivar County

Rock Levee Archeological Site (22B0637) (Lake Beulah Berm Project Archeological Sites), Address Restricted, Beulah vicinity, 10/29/87

MISSOURI

Daviess County

Lewis Mill Bridge, CR 570 1 mi. SW of MO 00, Jameson, 3/01/88

Greene County

Archeological Site Nos. 23GR539, 23GR600, and 23GR601, Address Restricted, Springfield vicinity, 7/25/88

Jasper County

Carthage Swimming Pool, Address not available, Carthage, 12/04/87

Olivia Apartments, 320 Moffet St., Joplin, 7/05/88

St. Louis Independent City

Archeological Site No. 23SL467, Address Restricted, St. Louis (Independent City) vicinity, 7/25/88

MONTANA

Blaine County

Sacred Heart Church, dDUS 2, 5 mi. E of Hwy. 66, Fort Belknap vicinity, 4/22/88

Custer County

Timber Bridge West of Miles City (24CR643) (Timber Bridges of Montana), W of Miles City over Cottonwood Creek, Mile City vicinity, 3/16/88

Dawson County

Timber Bridge Southwest of Glendive (24DW236) (Timber Bridges of Montana), 13 mi. SW of Glendive over irrigation canal, Glendive vicinity, 3/16/88

Fallon County

Timber Bridge South of Ismay (24FA231) (Timber Bridges of Montana), 3 mi. S of Ismay over Cottonwood Creek, Ismay vicinity, 3/16/88

Lincoln County

Swamp Creek, US 2, 12 mi. SE of Libby, Libby vicinity, 7/15/88

Madison County

Timber Bridge Northwest of Sheridan (24MA714) (Timber Bridges of Montana), 3 mi. NW of Sheridan over Wisconsin Creek, Sheridan vicinity, 3/16/88

Timber Bridge at Silver Star (24MA716) (Timber Bridges of Montana), MT 41 over irrigation ditch, Silver Star, 3/16/88

Timber Bridge over Cherry Creek (24MA795) (Timber Bridges of Montana), MT 41 over Cherry Creek, Silver Creek, 3/16/88

Phillips County

Timber Bridge at Malta (24PH2666) (Timber Bridges of Montana), Sixth Ave. over Dodson South Canal, Malta, 3/16/88

Ravalli County

Timber Bridge over Rye Creek (24RA91) (Timber Bridges of Montana), Over Rye Creek, City unavailable, 3/16/88

Timber Bridge South of Darby (24RA92) (Timber Bridges of Montana), 4 mi. S of Darby, Darby vicinity, 3/16/88

Richland County

Bridge 24RL169 (Main Canal Bridges of the Lower Yellowstone River), Over the Main Canal of the Lower Yellowstone, 1 mi. N of Crane, Crane vicinity, 6/23/88

Bridge 24RL170 (Main Canal Bridges of the Lower Yellowstone River), Over Main Canal of the Lower Yellowstone at W of Newlon, Newlon vicinity, 6/23/88

Bridge 24RL181 (Main Canal Bridges of the Lower Yellowstone River), Over Main Canal of the Lower Yellowstone, 3 mi. SW of Fairview, Fairview vicinity, 6/23/88

Bridge 24RL183 (Main Canal Bridges of the Lower Yellowstone River), Over Main Canal of the Lower Yellowstone, 2 mi. SW of Fairview, Fairview vicinity, 6/23/88

Teton County

Timber Bridge South of Chouteau (24TT121) (Timber Bridges of Montana), 4.9 mi. S of Chouteau, Chouteau vicinity, 3/16/88

Treasure County

Timber Bridge Southwest of Hysham (24TE44) (Timber Bridges of Montana), 3.5 mi. SW of Hysham over Buckingham Coulee, Hysham vicinity, 3/16/88

Wibaux County

Davis House, MT 7, Wibaux, 5/04/88

NEW HAMPSHIRE

Hillsborough County

Notre Dame Bridge, Over Merrimack River, Manchester, 1/07/88

NEW JERSEY

Burlington County

Evergreen Park, Pemberton—Brown's Mill Rd., New Lisbon vicinity, 7/18/88

NEW YORK

Genesee County

Batavia Archeological District, Address Restricted, Batavia vicinity, 10/04/87

Queens County

New York Architectural Terra Cotta Company Office Building, 42—10 Vernon Blvd., Queens, 2/17/88

Washington County

Fort Edward Archeological Site, Address Restricted, Fort Edward vicinity, 10/05/87

NORTH DAKOTA

Cavalier County

US Post Office, Langdon, 323 Eighth Ave., Langdon, 1/13/88

Stark County

US Main Post Office, Dickinson, 15 First St. E, Dickinson, 1/13/88

RHODE ISLAND

Providence County

Chemical Building, Fields Point Sewage Treatment Plant (Providence Sewage Treatment System MPS), Ernest St., Providence, 3/07/88

Ernest Street Sewage Pumping Station (Providence Sewage Treatment System MPS), Ernest St. at Ellis St., Providence, 3/07/88

Reservoir Avenue Sewage Pumping Station (Providence Sewage Treatment System MPS), Reservoir Ave. and Pontiac Ave., Providence, 3/07/88

Return Sludge Pumping Station, Fields Point Sewage Treatment Plant (Providence Sewage Treatment System MPS), Ernest St., Providence, 3/07/88

Sludge Press House, Fields Point Sewage Treatment Plant (Providence Sewage Treatment System MPS), Ernest St., Providence, 3/07/88

Washington Park Sewage Pumping Station (Providence Sewage Treatment System MPS), Shipyard St., Providence, 3/07/88

Washington County

Hoskins Park Site (RI-1007), Address Restricted, North Kingstown vicinity, 11/06/87

South Wind Site (RI-10006), Address Restricted, North Kingstown vicinity, 11/06/87

TENNESSEE

Sevier County

Smoky Mountains Hiking Club Cabin, Greenbrier Cove in Great Smoky Mountains National Park, Gatlinburg vicinity, 4/26/88

VIRGINIA

Fairfax County

World War I Temporary Warehouses, Lowen Rd., Fort Belvoir, 8/02/88

WASHINGTON

Chelan County

Headwaters Site (45 CH 208), Address Restricted, Coles Corner vicinity, 11/10/87

Okanogan County

Archeological Site 450K188, Restricted address, Omak vicinity, 12/18/87

Properties removed from eligibility for the National Register

ARIZONA

Maricopa County

Miller, Curt, House, 116 W. 4th St., Tempe, 4/08/88

ILLINOIS

Livingston County

Vieley Bridge, over N. Fork of the Vermillion River, City unavailable, 10/09/87

IOWA

Webster County

Hawkeye Avenue Bridge, spans the Des Moines River, Fort Dodge, 10/19/87

KANSAS

Dickinson County

Enterprise Parker Truss Bridge, City unavailable, Enterprise, 8/10/88

Montgomery County

Parker Bridge, 1.5 mi. SE of Coffeyville, Coffeyville vicinity, 8/10/88

MARYLAND

Wicomico County

Sharptown Bridge, MD Rte. 313 over the Nanticoke River, City unavailable, 3/11/88

MISSOURI

Franklin County

Tegeler, John, Barn, Located on the S side of US 50 approx. 1 mi. E of Gerald, Gerald vicinity, 2/23/88

Pulaski County

Riddle Bridge, CR 98, St. Robert vicinity, 11/13/87

[FR Doc. 89-18063 Filed 8-28-89; 8:45 am]

BILLING CODE 4310-70-M

federal register

Tuesday
August 29, 1989

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 81

Provisional Listing of FD&C Red No. 3 in Cosmetics and Externally Applied Drugs and of Its Lakes in Food, Drugs, and Cosmetics; Postponement of Closing Date; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of FD&C Red No. 3 in Cosmetics and Externally Applied Drugs and of Its Lakes in Food, Drugs, and Cosmetics; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Red No. 3 for use in coloring cosmetics and externally applied drugs and of the lakes of this color additive for use in coloring food, drugs, and cosmetics. The new closing date for the provisional listing of this color additive will be October 30, 1989. This postponement will permit the uninterrupted use of this color additive and its lakes while FDA prepares appropriate **Federal Register** documents to announce the agency's decision on the regulatory status of this color additive and its lakes.

DATES: Effective August 29, 1989; the new closing date for FD&C Red No. 3 and its lakes will be October 30, 1989.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: Under title II of the Color Additive Amendments of 1960 (the transitional provisions) (Pub. L. 86-618, sec. 203 (21 U.S.C. 376, note)), FDA is authorized to postpone the closing date of the provisional listing of a color additive. The standard for issuing such postponements is well established: "Such postponements must be consistent with the public health, and the Commissioner must judge that the scientific investigations are going forward in good faith and will be completed as soon as reasonably practicable." (*McIlwain* v. *Hayes*, 690 F. 2d 1041, 1047 (D.C. Cir. 1982) and *Public Citizen* v. *Young*, 831 F. 2d 1108, 1122 (D.C. Cir. 1987)).

In the **Federal Register** of August 30, 1988 (53 FR 33147), FDA proposed to postpone the closing date for FD&C Red No. 3. FDA proposed the postponement to allow the agency time to complete its evaluation of new data submitted by the Certified Color Manufacturers' Association (CCMA). The postponement was intended to allow the agency to complete its evaluation of the sale and use data on FD&C Red No. 3, to make a final decision with respect to the status of FD&C Red No. 3 under the color additive amendments, and to prepare the appropriate **Federal Register** documents for the regulation of this color additive. In the **Federal Register** of October 28, 1988 (53 FR 43685), FDA published a final rule to establish a closing date for FD&C Red No. 3 of June 20, 1989.

Thereafter, in the **Federal Register** of June 30, 1989 (54 FR 27640), FDA published a final rule postponing the June 30, 1989, closing date for the provisional listing of FD&C Red No. 3 for use in coloring cosmetics and externally applied drugs and of the lakes of this color additive for use in coloring food, drugs, and cosmetics. That final rule established a new closing date of August 29, 1989. FDA postponed the June 30, 1989, closing date to August 29, 1989, to provide the agency with sufficient time to prepare the **Federal Register** documents setting forth the agency's decision on the regulatory status of the color additive and its lakes.

Due to the complexity of the issues to be addressed in resolving the regulatory status of FD&C Red No. 3 and its lakes, the agency needs additional time to finalize the **Federal Register** documents articulating the agency's decision. Accordingly, FDA is now postponing the closing date for FD&C Red No. 3 and its lakes to October 30, 1989, by publication of this final rule. Accordingly, the order set forth below would amend 21 CFR 81.1(a) and 81.27(d) to postpone the closing date to October 30, 1989, to provide sufficient time for the agency to take final action in this matter.

The agency believes that postponement of the closing date for the provisionally listed uses of FD&C Red No. 3 and its lakes is appropriate and consistent with the standard for issuing such postponements. In particular, FDA believes that the continued use of these color additives for an additional period not to exceed 60 days will not pose a hazard to the public health. To the extent that there are risks from the use of FD&C Red No. 3 and its lakes, these risks result from chronic exposure to the color additive. Thus, a postponement of the closing date of no more than 60 days will not have any measurable effect on the public health. In addition, the agency has completed its review of the scientific data and will complete the **Federal Register** documents announcing the agency's decision as soon as practicable. These actions represent the final steps of the agency's evaluation of the investigations on the safety of the provisionally listed uses of FD&C Red No. 3. Accordingly, this brief postponement of the closing date for FD&C Red No. 3 and its lakes is consistent with the standard articulated in *McIlwain* v. *Hayes*, supra, and *Public Citizen* v. *Young*, supra.

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA has determined that extending the provisional listing of these color additives requires no change in the current industry practice concerning the manufacture or use of these ingredients.

Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities would derive from this action. Further, the economic effects of this final rule have been analyzed and it has been determined that it is not a major rule as defined in Executive Order 12291.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. Section 81.1 Provisional lists of color additives is amended in the table of paragraph (a) by revising the closing date, both places it appears, for the entry "FD&C Red No. 3" to read "October 30, 1989".

§ 81.27 [Amended]

3. Section 81.27 Conditions of provisional listing is amended in the table, appearing in the introductory text of paragraph (d), by revising the closing date for the entry "FD&C Red No. 3" to read "October 30, 1989".

Dated: August 25, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-20489 Filed 8-28-89; 10:39 am]

BILLING CODE 4160-01-M

federal register

Tuesday
August 29, 1989

Part V

Department of Energy

Office of the Secretary

Public Hearings to Solicit Views From Public Officials and the General Public on the Development of a National Energy Strategy; Notice

Public Hearings

Part V

Department of Energy

Office of the Secretary

Public Hearings to Solicit Views From Private Citizens and the General Public on the Development of a National Energy Strategy; Issues

DEPARTMENT OF ENERGY

Office of the Secretary

Public Hearings to Solicit Views From Public Officials and the General Public on the Development of a National Energy Strategy

AGENCY: Office of the Secretary, DOE.

ACTION: Notice of Meetings to invite public officials and the general public to provide comments on the development of a National Energy Strategy.

SUMMARY: This is the fifth in a series of public hearings being conducted throughout the country by the Department of Energy soliciting comments from interested parties on a wide range of energy issues and recommended solutions.

DATES: The public hearing is scheduled for September 8, 1989, from 9:00 a.m. to 5:30 p.m., at the Kentucky Center for the Arts, 5 River Front Plaza, Louisville, Kentucky. Individuals interested in testifying at this hearing should contact William H. Hatch, Office of Policy, Planning and Analysis, Department of Energy at (202) 586–4767 no later than 4:00 p.m., Friday, September 1, 1989. Persons wishing to submit testimony for the record in conjunction with this hearing should forward written comments to William H. Hatch, Office of Policy, Planning and Analysis, Department of Energy, Forrestal Building, Room 7H–034, 1000 Independence Avenue SW., Washington, DC 20585. All testimony received will be compiled and made available to the public.

FOR FURTHER INFORMATION CONTACT: For further information, please write or call William H. Hatch, Office of Policy, Planning and Analysis, Department of Energy, Forrestal Building, Room 7H–034, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4767.

Vito Stagliano,

Acting Deputy Under Secretary, Office of Policy, Planning and Analysis, U.S. Department of Energy.

[FR Doc. 89–20536 Filed 8–28–89; 11:20 am]

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CFR CHECKLIST

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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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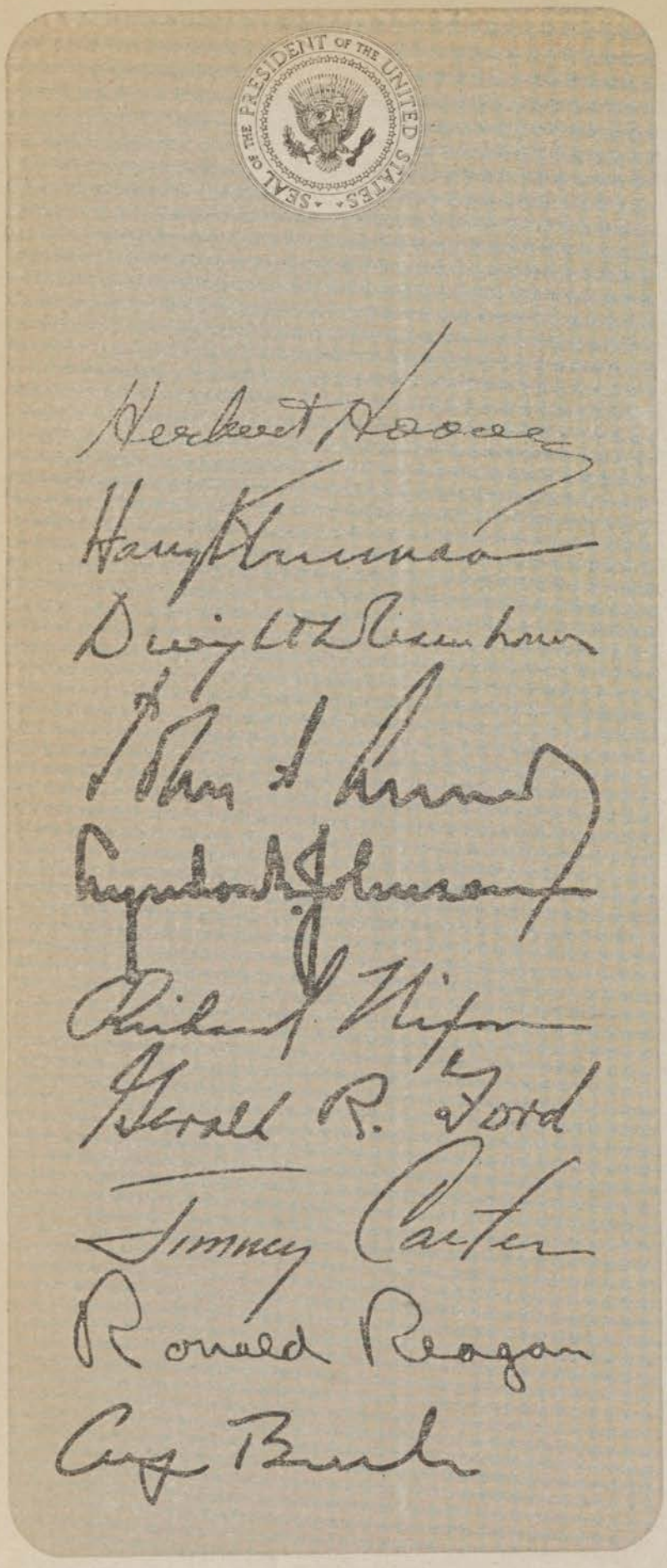

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